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AUTHORIZATION LEGISLATION AND OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE

(Civil Rights Division and INS)

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

THE DEPARTMENT OF JUSTICE AUTHORIZATION ACT FOR FISCAL YEAR 1988

MARCH 10 AND 24, 1987

Serial No. J-100-1

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AUTHORIZATION LEGISLATION AND OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

TUESDAY, MARCH 10, 1987

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:35 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee) presiding.

Also present: Senators Thurmond, Metzenbaum, Grassley, Simon, and Kennedy.

OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. The hearing will come to order.

I think there is a vote as we begin this, which means we will probably end up breaking for us to go vote, for which I apologize ahead of time to the witness, particularly since he has gone out of his way to accommodate our schedule.

Let me begin by making reference to an unrelated matter, unrelated to the Civil Rights Division, and that is that I would like to publicly compliment the Sentencing Commission today for voting as they have, and the chairman for voting as he did, to follow what I believe was the intention of the Congress not to attempt to include the death penalty in the process.

Senator METZENBAUM. Since the chairman sort of suggested to them that if they did not, there would be no Commission, I think they got the message.

The CHAIRMAN. Well, no. In fairness, I think Judge Wilkins may very well have arrived at that position and may have arrived at that ahead of time. But at any rate, I compliment them on their judgment, not merely because I do not think as a matter of policy it should be included, but because I think it would have drastically affected the ability of the Commission to function.

Mr. Reynolds, welcome, and thank you for your cooperation in preparing the materials that we requested several days ago, and your prompt and complete response assisted all of us in this hearing process.

I also want to thank you for making your statement available in advance, and I welcome the opportunity to discuss, as you describe it, "the approach and commitment of the Reagan administration to the enforcement of the civil rights laws."

You have played the most prominent role in developing that approach, and that is why it is very fitting that the discussion today turn more on the administration's basic commitment to civil rights than on the specifics of the budget and resources.

I agree with you that ultimately history will not measure the administration's civil rights records in terms of statistics, the number of cases brought, or the judgments obtained, because they will pale in comparison to the overall direction in which civil rights laws and policy will have moved during this era, and how they will be perceived to have moved.

I recognize that you and the administration believe you have passed the frontiers of the law, steering civil rights enforcement toward what you call a truly non-discriminatory course.

But many observers, and I must acknowledge, and it comes as no surprise to you, myself among them, believe that instead you have tried to turn the clock back, narrowing the application of our hard-won civil rights laws and spurning those in society who have historically been victimized by discrimination and prejudice.

I suppose if we examine the number of criminal cases the Civil Rights Division has filed or the number of pre-clearances issued under the Voting Rights Act, or even your won-loss record before the appellate courts, the picture would appear mixed, but it is really a matter of perception. Who's side do the people think you are on, "you" meaning the administration?

Perhaps you would not have to argue your case so vehemently if the actions of the administration spoke louder than its words. It is no secret that I have been dissatisfied with this administration's civil rights record, as you have been dissatisfied with many of the civil rights laws.

As chairman of this committee, I intend to have as great an impact on this area as I possibly can. There is nothing that is of a higher priority for me as chairman of this committee.

Where legislation is appropriate, such as the amendments to the Fair Housing Act, I intend to legislate. Where more resources are necessary, I will support those requests, and where the attention of my colleagues or the news media needs to be focused on a decision being made in the Justice Department, I intend to have this committee focus its attention.

The next 2 years, the last 2 years of the Reagan administration, are going to be a particular turbulent time for civil rights, in my view. New and troubling problems are facing this Nation that will challenge our collective tolerance and goodwill.

I believe there has been a disturbing increase in the number of incidents of racial violence that appear to be taking place, and that the United States will attempt to welcome into the fold millions of illegal aliens who speak many different languages and come from many different countries and cultures, and thereby further complicate what is an already complicated problem.

A recent editorial in the New York Times put it very well, I believe. It characterized President Reagan's appeal for a fresh start as his third inaugural, "a chance at the third term."

Besides arms control and deficit reduction, the article mentioned that "racial and social justice would be a splendid place to start." It seems to me this is your challenge, Mr. Reynolds, one that I hope you and the administration will accept; that is, as this third term starts that racial and social justice in a country that seems to be more inclined toward intolerance at this moment—that the President and you speak out.

I compliment you on going to Forsyth County, but unlike you, I do not believe it was a single incident. I believe it represents a perception growing out there in the public that somehow we will tolerate injustice more than we have in the past.

I am disappointed that the President—and you cannot control this—I am disappointed that the President has not gone on national television, as he would have, in my view, and he has in the past on other matters, to roundly and soundly condemn what happened in Howard Beach and Forsyth County and the Citadel and other incidents to speak, as he can to the Nation, about the need for us to be tolerant, and speak to the need for this country to move.

But I am not being solicitous when I suggest that I do compliment you on your going to Forsyth County, and would urge you to look beyond there and determine whether or not this is merely just an isolated incident, whether or not there is a mind set that seems to be growing in this country about whether or not we are going to, with a great deal of vigor, enforce the civil rights laws. We will not tolerate in any way a rebirth of racial intolerance in this country.

So I am delighted you are here, and I mean that sincerely. I have a number of questions for you on specific matters. I would invite my colleague and co-chairman, Senator Thurmond, to make an opening statement if he has one and would like to.

Senator Thurmond.

Senator THURMOND. Mr. Chairman, I have an opening statement and if there is no objection, I would ask unanimous consent to put it in the record.

[The prepared statement follows:]

OPENING STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman, this morning the Judiciary Committee continues its series of hearings to review the Department of Justice authorization request for fiscal year 1988. Today we will focus on the Civil Rights Division, hearing from Assistant Attorney General Brad Reynolds.

Mr. Chairman, in his prepared statement for this hearing, Mr. Reynolds has described in great detail the Department of Justice's civil rights enforcement record during the current Administration. His statement makes clear that the enforcement efforts of the Department in the critical area of civil rights have been vigorous and that results have been significant. In fact, the record of the Department in this area is a good one.

Mr. Reynolds, I want to welcome you. Although you no doubt came prepared to thoroughly discuss the Department's record, you are likely to hear charges and accusations today which bear little or no relationship to that record. Of course, as you of all people well understand, civil rights is an area on the cutting edge of political debate today. At times, this debate becomes no more than extreme and politically opportunistic rhetoric. Should it do so today, I suggest that you stand firmly on your record and the facts. The interests of our citizens are best served when we deal with issues in a straight-forward and factual manner.

You may hear charges today that the Administration has "created a climate in which racist events have occurred" or is at fault because such events have occurred "on its watch". These are ridiculous charges and simply cheapen what is one of the most important debates of our time.

Mr. Chairman, I hope the Committee will focus on the facts and the record as outlined by Mr. Reynolds' statement. Yes, the current Administration opposes quotas; yes, the current Administration believes there to be vastly preferable alternatives to busing, and, yes, the Administration supports a color-blind application of equal opportunity and justice. These positions were a matter of record and were, in fact, well known by the American public prior to the 1984 Presidential election in which Ronald Reagan was resoundingly re-elected. Their depiction as being extreme positions in today's society is completely false.

I look forward to Mr. Reynolds' testimony. I commend him for the excellent service he has rendered to all of the citizens of our Nation.

Senator **THURMOND**. We are having a strategic hearing on arms control in the Armed Services Committee, and I feel I must be there on that particular matter.

I want to welcome Mr. Reynolds here and congratulate you for your faithful and capable public service, and I will take pleasure in reading the record later, Mr. Reynolds.

The **CHAIRMAN**. Does my colleague from Ohio have an opening statement?

OPENING STATEMENT OF SENATOR METZENBAUM

Senator **METZENBAUM**. I do.

Mr. Reynolds, you know, as I was sitting here, I was thinking about my own reaction to where we are and where you are in this entire picture. As you know, when you were up for confirmation as Associate Attorney General, I did not support that confirmation and you remained with the Department, and that is understandable.

But I guess what really concerns me is the area of your responsibility. Assistant Attorney General for Civil Rights, in my own concept just is not the right place for you to be.

I think you are a fine lawyer and I have no problem about that. I think you are a good human being. I think there are so many other places you could be in the Department, and it is not a question of really whether you are or are not good. It is the perception, and perception is so much of what we deal with in America and the world, and in our own personal relationships.

We can be the sweetest human being in the world, but if people perceive us as being not that sweet or something different, it is the perception that counts. And for the last 6 years—well, going back before 6 years, before this administration took office, there was a constant progression upward—the Voting Rights Act, the Civil Rights Act, etc.

We went down and marched in Selma; tremendous crowds turned out here in Washington and there was progress. It was a constant kind of progress, and it was not only Democratic progress; it was Republican progress as well. It was a bipartisan kind of progress.

And then in the last 6 years we have stopped the clock—no, we did not stop it; we turned the clock backwards. The hands went backwards, and we found that the Justice Department, which should be on the side of those seeking civil rights and concerned about fairness and equality—was in court too often against that side; not in every case, but too often.

And then those seeking civil rights looked to the government as their champion, because they always knew they could look to their government to be on their side. Now, they find that Brad Reynolds has not been on their side that much.

Although we may get into some discussion as to how many cases you filed and what you did do and what you did not do, the fact is that the perception out there and the things we read about in the papers, regardless of what kind of papers they are, is that this administration has gone into court time and time again against the civil rights of individuals.

And so I say as we greet you here this afternoon and we talk about budgetary matters and we talk about oversight of your responsibilities that I think for Brad Reynolds to be the spokesperson for the Government of the United States in civil rights cases just does not fit; it does not sit right.

And so I tell you that I have some questions of you that seem to confirm my views. But having said it, it does not relate specifically to my questions or to any specific actions or lack of actions. It has to do with the fact that the public perception is that Brad Reynolds is not committed to the proposition that all people are equal in this country and entitled to equal rights.

Thank you, Mr. Chairman.

The CHAIRMAN. The Senator from Iowa, do you have an opening statement?

Senator GRASSLEY. No, I do not have an opening statement, but Senator Thurmond asked if this series of questions that he was going to ask Mr. Reynolds if he were here, if those could be answered in writing, so I will submit those to you, Mr. Reynolds.

The CHAIRMAN. We have opening statements from Senators Hatch and Humphrey which we will insert in the record at this point.

[The statements follow:]

STATEMENT OF ORRIN G. HATCH

CIVIL RIGHTS DIVISION OVERSIGHT

SENATE JUDICIARY COMMITTEE

MARCH 10, 1987

MR. CHAIRMAN. IT IS A GREAT PLEASURE TO WELCOME ASSISTANT ATTORNEY GENERAL BRADFORD REYNOLDS TO THE JUDICIARY COMMITTEE TODAY. FEW PUBLIC SERVANTS MORE DESERVE THE RESPECT AND GRATITUDE OF THE AMERICAN PEOPLE THAN YOU, MR. REYNOLDS.

WITH THE SMALLEST BUDGET OF ALL OF THE JUSTICE DEPARTMENT'S LITIGATING DIVISIONS, YOU HAVE STILL MANAGED TO INITIATE MORE CRIMINAL CIVIL RIGHTS SUITS EACH YEAR THAN WERE BROUGHT IN THE YEARS OF THE PRIOR ADMINISTRATION. MOREOVER YOUR SUCCESS RATE IN THOSE PROSECUTIONS IS THE HIGHEST IN THE THIRTY-YEAR HISTORY OF THE CIVIL RIGHTS DIVISION.

DESPITE SCARCE RESOURCES, YOU HAVE INCREASED EACH YEAR THE NUMBER OF CASES BROUGHT TO ENFORCE TITLE VII, WHICH PREVENTS EMPLOYMENT DISCRIMINATION. IN FACT, IN THIS AREA AGAIN, YOU HAVE BROUGHT MORE CASES ON AN ANNUAL BASIS THAN THE PRIOR

ADMINISTRATION. MOREOVER, YOUR EFFORTS HAVE PRODUCED LARGER BACK PAY AWARDS FOR THOSE INJURED IN THESE SUITS THAN WAS OBTAINED BY THE PRIOR ADMINISTRATION.

VOTING RIGHTS HAVE BEEN ACCURATELY CHARACTERIZED AS THE RIGHTS NECESSARY TO PROTECT OTHER RIGHTS. HERE AGAIN YOU HAVE BROUGHT MORE CASES ON AN ANNUAL BASIS THAN THE PRIOR ADMINISTRATION. MOREOVER, YOU HAVE REVIEWED OVER 80,000 CHANGES IN VOTING PROCEDURES -- ANOTHER ACCOMPLISHMENT WHICH FAR ECLIPSES THE PRIOR ADMINISTRATION.

WITH REGARD TO ONE PARTICULARLY VULNERABLE GROUP OF CITIZENS, YOU HAVE ADMIRABLY INAUGURATED THE ENFORCEMENT OF THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT OF 1980. AS ONE OF THE CHIEF AUTHORS OF THAT ACT, I HAVE BEEN PLEASED TO LEARN THAT YOUR INVESTIGATIONS IN THIS AREA HAVE RESULTED IN SIGNIFICANT CHANGES IN MENTAL HEALTH FACILITIES, NURSING HOMES, AND CORRECTIONAL INSTITUTIONS.

THIS IS NOT THE ONLY AREA WHERE YOU HAVE CHARTED NEW CIVIL RIGHTS TERRITORY. YOU HAVE ALSO TAKEN THE INITIATIVE TO ENSURE THAT ALL FEDERAL EXECUTIVE AGENCIES COMPLY WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF HANDICAP.

ALTHOUGH THIS LIST OF YOUR ACCOMPLISHMENTS COULD GO ON, I WILL MENTION ONLY ONE MORE AREA -- ENFORCEMENT OF OUR LAWS PROHIBITING HOUSING ENFORCEMENT. WHEN YOU TOOK OFFICE, THE PRIOR ADMINISTRATION HAD TURNED TITLE VIII ENFORCEMENT OVER TO THE U.S. ATTORNIES WHO WERE NOT VIGOROUSLY PROSECUTING THESE

CASES. YOU REINVIGORATED HOUSING ENFORCEMENT BY PULLING TITLE VIII ENFORCEMENT BACK INTO WASHINGTON, RECREATING A SEPARATE SECTION TO HANDLE THE PROSECUTIONS, AND COMMITTING SIGNIFICANT RESOURCES TO THIS VITAL AREA. THIS IS STILL ANOTHER INSTANCE WHERE YOU REJUVENATED AN ASPECT OF CIVIL RIGHTS ENFORCEMENT WHICH HAD BEEN SHORT-CHANGED BY YOUR PREDECESSOR.

IN AREA AFTER AREA, YOUR PERFORMANCE AND SENSITIVITY TO CIVIL RIGHTS OUTSTRIPS THAT OF THE ADMINISTRATION WHICH PRECEDED YOU. I KNOW THAT YOU HAVE BEEN CRITICIZED BY THOSE WHO DO NOT VIEW THE CONSTITUTION AS COLOR-BLIND. I KNOW THAT YOU HAVE BEEN MALIGNED BY THOSE WHO SEEK PREFERENTIAL TREATMENT FOR SOME RATHER THAN EQUAL OPPORTUNITY FOR ALL. THEIR NARROW CRITICISM, HOWEVER, OVERLOOKS THE ENORMOUS IMPROVEMENTS YOU HAVE MADE IN YOUR OFFICE FOR THE BENEFIT OF ALL AMERICANS. I COMMEND YOU FOR THOSE ADVANCEMENTS AND FOR ALL THAT YOU HAVE ACHIEVED AT THE CIVIL RIGHTS DIVISION.

SENATE JUDICIARY COMMITTEE
AUTHORIZATION/OVERSIGHT HEARING FOR DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

MARCH 10, 1987

STATEMENT OF SENATOR GORDON J. HUMPHREY

MR. REYNOLDS, I WELCOME YOUR APPEARANCE BEFORE THIS COMMITTEE.

I DO NOT SHARE THE VIEWS OF THOSE WHO HAVE ATTACKED THE POLICIES AND PERFORMANCE OF THE CIVIL RIGHTS DIVISION DURING YOUR TENURE. I BELIEVE YOUR EFFORTS HAVE BEEN COURAGEOUS AND COMMENDABLE.

MOST OF THESE ATTACKS HAVE CHALLENGED YOUR EFFORTS TO REDUCE THE INDISCRIMINATE USE OF PREFERENTIAL REMEDIES -- SUCH AS RACE- OR GENDER-BASED QUOTAS -- IN CIVIL RIGHTS LITIGATION.

IN SEVERAL MAJOR CASES -- THE STOTTS CASE, THE WYGANT CASE, AND THE RECENT D.C. FIREFIGHTERS DECISION -- THE COURTS HAVE AGREED WITH YOU AND ESTABLISHED LONG-OVERDUE LIMITATIONS ON THE USE OF RACIALLY PREFERENTIAL REMEDIES. IN OTHER CASES, A DIVIDED SUPREME COURT HAS REJECTED YOUR MAIN ARGUMENTS, YET ENDORSED THE PRINCIPLE THAT THESE HARSH REMEDIES ARE TO BE USED ONLY AS A LAST RESORT WHICH MUST BE NARROWLY APPLIED TO CORRECT EXTREME CASES OF DISCRIMINATION.

YOU AND YOUR STAFF SHOULD BE COMMENDED FOR TAKING ON THESE CONTROVERSIAL ISSUES AND DOING SO MUCH TO CLARIFY THE LAW IN THIS DIFFICULT AREA. IT IS UNFORTUNATE THAT THE PUBLIC SERVICE YOU HAVE PERFORMED IN THIS HAS CAUSED YOU TO BE REVILED AND ATTACKED BY THOSE WHO WOULD PREFER THAT THE SERIOUS INEQUITIES RAISED BY RACIAL QUOTAS BE POLITELY IGNORED.

ANY HONEST REVIEW OF YOUR DEPARTMENT'S RECORD WILL REVEAL THAT YOU HAVE DILIGENTLY AND EFFECTIVELY ENFORCED THE NATION'S CIVIL RIGHTS LAWS. IN MANY IMPORTANT AREAS, THE RESULTS ACHIEVED DURING YOUR TENURE **SUBSTANTIALLY** EXCEED THOSE OF THE PRIOR ADMINISTRATION. YOUR VERY STRONG RECORD IN CRIMINAL PROSECUTION OF RACIAL VIOLENCE CASES IS ESPECIALLY NOTEWORTHY, MEASURED AGAINST THE GROUNDLESS ATTACKS THAT HAVE BEEN MADE AGAINST THE DEPARTMENT IN THAT AREA.

MR. REYNOLDS, YOU HAVE ONE OF THE MOST DIFFICULT POSITIONS IN THE FEDERAL GOVERNMENT. CHARGES THAT YOU HAVE NOT BEEN AGGRESSIVE ENOUGH IN ENFORCING THE CIVIL RIGHTS LAWS ARE COUNTERED BY CONTRARY CHARGES THAT, IN SOME CASES, THE DEPARTMENT HAS GONE OVERBOARD IN PURSUING DUBIOUS CASES IN THE AREAS OF HOUSING DISCRIMINATION, SCHOOL DESEGREGATION, AND VOTING RIGHTS. IT IS PLAINLY IMPOSSIBLE TO PLEASE EVERYBODY IN YOUR POSITION, BUT IT IS CLEAR THAT YOU HAVE DONE A CONSCIENTIOUS JOB IN STRIKING THE PROPER BALANCE.

The **Chairman**. If I can figure out my book here, I would like to again, Mr. Reynolds, discuss fair housing, if I may. Do you agree that there is a need for stronger enforcement mechanisms to end housing discrimination in this country?

STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. **Reynolds**. Mr. Chairman, I certainly do.

Before getting into questions and answers, if I could make a statement, I thought that maybe——

The **Chairman**. Yes. I am sorry; I beg your pardon. Not only make a statement, take as much time as you would like, and your entire statement will be placed in the record as if read, and you use as much of it as you would like.

Mr. **Reynolds**. Well, I appreciate that.

The **Chairman**. I apologize.

Mr. **Reynolds**. I would ask that the full statement be made part of the record. I do not intend to read that whole statement.

The **Chairman**. I was concentrating so much on finding my questions, I forgot you had not made an opening statement.

Mr. **Reynolds**. Well, I am not trying to duck your questions.

The **Chairman**. No, no. We have plenty of time for that; I know that.

Mr. **Reynolds**. If I could make just a few brief remarks.

The **Chairman**. Sure; take as much time as you need.

Mr. **Reynolds**. Mr. Chairman and members of the committee, the Civil Rights Division of the Department of Justice was established in 1957, following enactment of the first civil rights statute since Reconstruction, as the primary institution within the Federal Government responsible for enforcing Federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin.

Over the past 30 years, the Division has grown dramatically both in size and responsibility. With the enactment of the 1957, 1960 and 1964 Civil Rights Acts, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, the Equal Education Opportunities Act of 1974, the Civil Rights of Institutionalized Persons Act of 1980 and various other civil rights statutes, the scope of the Division's enforcement activities has significantly expanded.

Today, the Division safeguards the constitutional and Federal statutory rights of all Americans to be free from discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally-funded and conducted programs. Additionally, the Division is charged with prosecuting criminal civil rights violations.

Under the administration of President Reagan, the single and resounding theme that has characterized the law enforcement activities of the Civil Rights Division has been the legal, constitutional and moral imperative of equal treatment for all individuals without regard to skin color, gender, ethnicity or religious beliefs.

Guided by this principle, the Division has aggressively enforced civil rights laws throughout the United States. As this committee knows, a significant portion of the Division's resources is devoted to investigating civil rights violations.

These investigations have touched every State in our Nation, have involved the rights of virtually every racial, ethnic, gender and religious group, and have encompassed all substantive areas of our enforcement authority. Many of these investigations result in voluntary compliance by the offending parties.

In other instances, however, it is necessary for us to file suit, not only to end all discriminatory practices by the defendants and to obtain full redress for the victims of discrimination, but also to send a strong and unambiguous message to other offenders or would-be offenders that discrimination against any individual will not be tolerated by this Civil Rights Division.

Our lawsuits have involved a broad range of civil rights violations, defendants, and victims. For example, over the past 6 years we have brought suit against numerous substantially all-white suburbs of two major northern cities that maintained racial residency requirements for municipal employment that operated to exclude virtually every black applicant; against a State employer that discriminated against pregnant female employees in its temporary disability program; against developers and marketers of time-share resort properties from Florida to California that discriminated against minorities; against lenders that refused to grant credit to American Indians where the collateral for the loan would be located on an Indian reservation; against mental retardation facilities that overused physical restraints and misused powerful tranquilizing drugs; against a State maritime academy that had intentionally discriminated against women in recruitment and admissions; against a city that denied blacks an equal opportunity to participate in municipal elections through an at-large election system rather than elections by district. These are but a few examples of litigation pursued by the Division.

In the area of criminal prosecution of civil rights violations, the Division has established an unprecedented success record and has played a major role in the elimination or significant reduction of many racial hate groups throughout the country.

Significantly, we have closely scrutinized remedies imposed over the last two-and-a-half decades of civil rights enforcement to measure their effectiveness. In every case, we have sought as a remedy measures that will end the discriminatory conduct and provide full and lasting relief to those who have suffered injury at the hands of the wrongdoer.

Where we have been able to develop more effective and lasting remedial alternatives, we have vigorously urged these upon the courts and the parties. Thus, for example, this Division has been instrumental in the development of innovative and exciting magnet schools and programs throughout the country as an effective desegregation alternative to forced busing, and one that has as an essential focus of providing quality education for all public school children.

We have also experienced success with affirmative action remedies in the employment area by emphasizing outreach training and active recruitment as the means to achieve equal employment opportunity.

While substantial progress has been made over the past 30 years in the civil rights arena, discrimination still exists. In many instances, it is far more subtle than the blatant discrimination of the 1950s and 1960s. Nevertheless, prejudice and bias, wherever they exist and to whatever degree, are a cancer within our society that must be eliminated.

The Civil Rights Division's dedication to that end is well documented. Its commitment today remains no less than 30 years ago to protect the rights of all citizens through the aggressive enforcement of the laws passed by Congress for that purpose.

In this hearing, it is both necessary and appropriate once again to spread on the record the extraordinarily active and effective achievements of the men and women of the Civil Rights Division. I trust that by doing so, we will not only receive a reaffirmation of your equal commitment to civil rights through your authorization to continue this enforcement program, but also will be able to lay to rest the absurd contention that this administration is not fully dedicated to assuring the civil rights of all citizens through the aggressive enforcement of laws passed by Congress for that purpose.

In order to provide a complete documentation of the activities of our Division and to avoid any mistakes or misunderstandings or misperceptions of what we have and have not been doing, I requested that each of the Division's component sections prepare a detailed account of our enforcement activities so that this committee and others will have a full and accurate report of the Division's accomplishments.

Mr. Chairman, I would ask that this report, which is entitled "Enforcing the Law, January 20, 1981, to January 31, 1987," be accepted by the committee and made part of the printed record of this hearing.[1]

As the report amply demonstrates, with the smallest budget of all the Department's litigating divisions, Civil Rights has made a tremendous impact.

The **Chairman**. Without objection, it will be placed in the record.

Mr. **Reynolds**. We have some copies here and if you would like, we can hand them up to the members of the committee and make them available.

I also understand, Mr. Chairman, that information that has been transmitted to the committee over the signature of Assistant Attorney General John Bolton pursuant to your request—that you all have received that, and I would ask that that information, less copies of briefs and the statements which are already in the public domain, be included as well in the official record of these proceedings.

The **Chairman**. Without objection, that will be included, also.

Senator **Metzenbaum**. What are we going to include in the record?

The **Chairman**. The request we made of Assistant Attorney General Bolton.

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[1] Report can be found on page 83.

Mr. **Reynolds.** I am sorry. The request was from the chairman to provide information which we provided over the signature of Assistant Attorney General Bolton in response to the chairman's request for information.

Senator **Metzenbaum.** I have no objection.

Mr. **Reynolds.** I would be pleased to answer questions.

The **Chairman.** Thank you and, again, I apologize for going straight to the questions. I did not, in any way, want to cut off your statement.

Let me ask you about this, which I have not seen, but I will read. Does this document contain a comparison of initiatives in other administrations? Do you compare how many actions are brought under the Division in this administration and the last?

Mr. **Reynolds.** There is that information in the document in appropriate places where there is a comparison. Some of the enforcement activity that we are responsible for, for example, in institutionalized person enforcement activity under the Act that was passed in 1980 is not one that would lend itself to a comparison.

The **Chairman.** But where it does lend itself, there are comparisons?

Mr. **Reynolds.** There is comparative information in here, certainly, in many of the places, and where you would like some additional information, if it is not included, we certainly would be happy to provide it.

The **Chairman.** Thank you.

Let me go back to fair housing, if I may. As you know, I, along with others on this committee, am committed to moving the fair housing law amendments as quickly as possible. Obviously, we agree, and I assume we agree, that every American has a right to find housing without facing discrimination.

The study sponsored by the Department of Housing and Urban Development has documented the alarming degree to which housing discrimination still exists in this country. We need a more effective enforcement mechanism and the bill that I am cosponsoring, I believe, provides that. It sets up an administrative hearing process using administrative law judges.

Now, let me begin by asking you, are you familiar, Mr. Reynolds, with HUD's study?

Mr. **Reynolds.** Which study is that?

The **Chairman.** The study documenting discrimination in housing where it found that 48 percent of blacks seeking to buy a house will face discrimination and that nearly three-quarters of black renters will encounter racial bias. Are you familiar with the study?

Mr. **Reynolds.** I am aware of that study. I am not intimately familiar with it, but I am aware of it.

The **Chairman.** Do you have an opinion as to whether or not it is an accurate assessment of the problem?

Mr. **Reynolds.** Well, it is difficult when you talk in terms of sort of gross percentages, but I think it is accurate to conclude that discrimination in housing is a continuing problem in this country and one that needs to be addressed, and it has been this administration's position that it needs to be addressed with some strengthening of the fair housing law that is now on the books.

The CHAIRMAN. How serious a problem do you think it is? Is it like the racial incidents across the country, in your view, which you view as being scattered and not representative of any trend, or is it a serious and persistent problem that many blacks and minorities encounter? In what category——

Mr. REYNOLDS. I am not sure I can categorize it. I do not know who has the wealth of information that would allow for that kind of a conclusion to be drawn. I think that it is a problem. It is a persistent problem; it is one that exists and one that we treat on a daily basis.

I would say that it is probably less of a problem today than it was 15 years ago or 10 years ago, but I think it is a continuing problem that we still need to focus on intensely.

The CHAIRMAN. What do you think the most pressing civil rights problem facing this country is today?

Mr. REYNOLDS. Discrimination.

The CHAIRMAN. What type of discrimination?

Mr. REYNOLDS. On the basis of race.

The CHAIRMAN. In what area, in particular, housing, education?

Mr. REYNOLDS. Well, I think if you have it in any area, it is a pressing problem, and I would hesitate to get into a position of trying to rate priorities. I think if we have discrimination in this country, whether it is in housing or schools, or employment, or any other area, it is equally pressing and we should not tolerate it.

The CHAIRMAN. But in light of your limited budget, do you not, in fact, have to do that? If you are going to aggressively pursue civil rights and elimination of discrimination, do you not have to do just what you have to do in the Criminal Division?

Do you not have to go out there and conclude, for example, that drugs is a more important problem, a more pressing problem than, say, white collar crime, although that is obviously a phenomenal problem?

I mean, every other division that comes before us attempts to prioritize what they feel is the most pressing need within their department, whether it is the Department of Defense or whether it is the Criminal Division of the Justice Department.

Do you do that in the Civil Rights Division?

Mr. REYNOLDS. Well, I am not sure we have the same luxury. I think it is our obligation to take all the problems, to take the resources we have, and to try to stretch those resources to cover them relatively even-handedly.

There are going to be some periods of time when there is more activity with regard to one particular area than another, but I would hesitate to suggest that we have a roster that ranks them on one priority or another. I think they are all equally important and we have to do the best with what we have in the way of resources.

The CHAIRMAN. Well, do you believe you have sufficient resources to adequately pursue civil rights in this country to the degree that you would like?

Mr. REYNOLDS. Well, "the degree you would like." Everybody would love to have unlimited resources, I am sure. We do not have that in the real world of the budget and the realities of the budget. I think that what we have is——

The CHAIRMAN. You would be surprised at what we would be willing to give you if you would enforce the law. I am not being facetious; I am being serious.

Mr. REYNOLDS. I think that we have submitted a budget that we feel is a responsible budget that allows us to do our enforcement responsibility in a responsible and vigorous fashion, consistent with all the other different constraints that do indeed come to bear on the budget analysis.

The CHAIRMAN. Let us go back to housing for a minute. I would appreciate it if you have someone on your staff take a look at that HUD report. It is surprising me a little bit that they have not to make a judgment about how accurate its assessment because, obviously, if one out of two blacks who seek to purchase a home is, in fact, faced with discrimination, then that is a national problem of monumental proportions.

Mr. REYNOLDS. I did not say they had not. I said that I was not personally intimately familiar. I think that, indeed, our Housing Section is familiar with it and they have looked at it and they are working with HUD on dealing with that problem, and with outside groups, also.

My testimony was not intended to indicate that we have not, in the Division, looked at it, but in terms of whether I personally was intimately familiar, I am generally familiar with it, but I do not have the kind of intimate familiarity that I am sure the people who have that specific responsibility in our Division have.

The CHAIRMAN. Well, what would concern me, very frankly, Mr. Reynolds, is that if, in fact, I had my division look at a report that said one of every two black women or men who go out and look for a house is being discriminated against, one of two things would happen.

Either that division would say we have got an overwhelming, serious problem that requires urgency or they would say it is probably exaggerated, one of the two. I mean, how there could be someone who looked at a report in the Justice Department, assuming they concluded that the study was right, and not think that was a national scandal—I do not know whether the study is correct or not. I am having my people trying to go through it to determine whether or not the basis upon which they made their judgment was accurate. It seems as though it is.

But it just concerns me a little bit that they somehow have not gotten it up to you as to the extent of its urgency. But let me——

Mr. REYNOLDS. I guess again you are misstating what I said and I would like to make sure the record is clear.

The CHAIRMAN. Okay.

Mr. REYNOLDS. I think that it is a study that suggests that there is a very urgent problem. It is one that both HUD and the Department of Justice have a responsibility to deal with and that is being dealt with at those levels.

I think that part of the reason that the administration has come to Congress to enhance the Fair Housing Act is to get more teeth in the legislation is to enable us to come to grips with that problem.

But the way that the housing enforcement mechanism is set up is really on a multi-level basis, a good part of which deals with referrals to the States by reason of the process that HUD has, a good portion of which HUD does at the administrative level, and then a portion of which we do in terms of litigation.

I think it is fair to say that all of us view it as a serious problem that we certainly are going after in a very vigorous fashion.

The CHAIRMAN. Well, I do not want to beat this to death, but you are the administration's point man on civil rights and it seems to me at some point you have to draw a conclusion to guide the administration and recommend to it, and us, also, as to whether or not you believe one in every two blacks in America is discriminated against when they go to buy a house.

I mean, that is a pretty big deal, and that is the only point. I am not trying to misstate your position. You indicated to me you do not know whether or not that is correct. Is that correct?

Do you believe one out of every two black people who go to get a house is discriminated against? That is what the report says. Do you believe it is true?

Mr. REYNOLDS. I have no reason to doubt that.

The CHAIRMAN. Okay, good. Now, let me ask you what you are going to do about it. You indicated that we have slightly different approaches here. I would say more than slightly, but slightly different approaches, and that is, as I understand it, the administration's proposal on discrimination in housing is to see to it that—well, why do you not explain what it is?

Rather than my characterizing it, why do you not tell me what it is and then let me ask you some questions about it so we do not get into a semantic argument about what you are attempting?

Mr. REYNOLDS. Well, the administration's position is to expand the government enforcement powers under the statute to allow the Department of Justice to bring actions on the basis of individual claims, since we now have only "pattern and practice" actions, to seek to allow through the legislation for civil penalties up to $50,000 for the first violation, $100,000 for the second violation. Then there are some other features of it that I believe are in both bills in terms of expanding the Fair Housing Act to deal with handicap discrimination, which is not now in the statute.

The CHAIRMAN. Do you believe the HUD conciliation process that is now in place is working, is effective?

Mr. REYNOLDS. I think that it is working. I think that in many respects it is effective. I think that the referral process that is in place under that which deals with referring a number of the less complex cases to the States where it can be certified that the States have a parallel enforcement mechanism seems to be something that is working quite well.

But I do think that there is a need to provide the Justice Department with an ability to go into court in more individual cases.

The CHAIRMAN. Right now, HUD has about 4,500 complaints, and that number is increasing. How many attorneys do you have working on housing cases now?

Mr. REYNOLDS. Eighteen attorneys in the Housing Section.

The CHAIRMAN. Eighteen attorneys in the Housing Section?

Mr. REYNOLDS. Right.

The CHAIRMAN. And how much of an increase have you requested in the Housing Section of your budget in order to accommodate this new responsibility that you would have, which would be to bring individual cases?

Mr. REYNOLDS. Well, you mean for the new statute?

The CHAIRMAN. Yes, what you are recommending.

Mr. REYNOLDS. We have not asked for increased budget relief on the new statute because it is not in effect yet. So the way the budget is sent up——

The CHAIRMAN. Since you all are proposing it to us, what do you anticipate asking us for—you must have contemplated that—if it passes?

Mr. REYNOLDS. I am afraid that gets way out ahead of the next budget cycle, but we would certainly address it.

The CHAIRMAN. Well, you must have thought about it. I mean, to determine whether or not you can effectively do what you want the law to be able to do, have you not contemplated what impact it would have on the workload of the Division?

Mr. REYNOLDS. I think that we would anticipate that there would be an increased workload and we would calculate that at the time the Congress passed a statute and we could look at the statute and the terms, and then we would assess what the budget consequences are for additional resources. That is within the usual process.

The CHAIRMAN. Well, I realize my time is up, but I am new at being chairman, so I am going to pretend I do not see it and keep right on going for a minute here and then I will give my colleagues equally as much time as I had, because I would like to finish this line of questioning.

I am a little bit perplexed that if the reason for the need for additional legislation is we acknowledge that the problem has not only not gone away but is still a significant problem—that is, housing discrimination—and that the present HUD mechanism obviously is not sufficient—it may be working, as you say, fairly well, but if it were sufficient, we would not need any new legislation, so obviously it is not sufficient. HUD is now way behind the curve because there are so many complaints.

I cannot fathom how you are going to be able to handle it, even if it is only one-half the number of cases. Let us say you only get 2,000 complaints; right now, there are 4,500 before HUD. If you only get 2,000, how are you going to handle it with anything remotely approaching the number of attorneys you now have, particularly since we are going to be telling these people, if they have a case and controversy and if they have any case under the law, you are going to be in court suing homeowners and their actions?

I mean, is it not going to be an incredible time constraint?

Mr. REYNOLDS. Well, let me just make two preliminary comments. I am not sure that the 4,000 figure that you are using is accurate. I have heard that that is overstated to a considerable degree.

It is the case that HUD is actually about 80 percent up to where its complaints are and its processing of the complaints. So it is not way behind the curve, but it is behind.

And I think that you have pointed out what is a very legitimate point of discussion and deliberation, by this body and the House, in terms of considering what the proper legislation is to put teeth into the statute. I would agree with you, Mr. Chairman, that one of the things that ought to be factored into the whole evaluation of the fair housing legislation is what resources we are talking about that would be attendant to whatever the change is. I think that is absolutely part of the legislative process.

The CHAIRMAN. Those cases which have to go to court to be resolved are going to be relatively time consuming, are they not? I mean, it is not like an administrative law judge you roll in and roll out. I mean, will it not take more time per case?

Mr. REYNOLDS. Actually, what we found, and it is very well documented, is that the going to court route expedites the whole process considerably because generally what you wind up with is a consent decree that is filed at the time of the complaint, and probably about 75 percent or better of the cases—ones that are targeted for investigation and then get involved in potential litigation—are solved quite quickly because of the threat of litigation that is hanging over everyone's head.

So it has been the case that the litigation route really has served to expedite the process in large measure by moving the parties in the direction of a consent decree resolution.

The CHAIRMAN. What is your objection to the administrative law judge proposal at this point?

Mr. REYNOLDS. I think that certainly that proposal is one that we are more than willing to look at closely and work with the Congress on, and I do not want to suggest, Mr. Chairman, you know, that we are at total loggerheads on that.

The Secretary has indicated, certainly, that he is willing to talk about it and discuss it, and so is the Attorney General, and to the extent that I can be helpful in that process, I certainly am, too.

I think that the concern that we have is that the ALJ process tends, wherever it has been put in place, to become rather overbloated in terms of the whole layering of bureaucracy and, in the process, does indeed slow things down considerably.

Our sense is that it may well be sort of a solution that provides no real answers and we ought to think through very carefully whether that is exactly the way that we want to go. But as I say, I think that there is room for discussion on that.

My own sense is that there might be some deliberation or some consideration given to some other alternate disputes mechanism that could be available that would allow for arbitration of some sort that could move these things faster than you can in the ALJ process or the court system.

I think that is what everybody wants to get to and I am not sure we are at a point with this legislation where we ought to be locked in concrete on one or the other because I do think there is some movement to——

The CHAIRMAN. I can assure you that I am not locked in concrete. If, in fact, there is a commitment of the Department and a demonstration that they are willing to move toward a way whereby we can more cheaply and expeditiously move these cases, then I, for one, am prepared to listen. And so I invite you to ask whomever in your Department would be the appropriate person to work directly with me on that matter.

This is my last question; it was going to be a question and you have commented on it. The administration in every other area is pushing very hard for alternative means of settling disputes other than the court system.

Mr. REYNOLDS. Right.

The CHAIRMAN. And it seems somewhat inconsistent here as a general principle that where there is a means that is different than using the existing court system for what is obviously a significant problem that you would be moving it into the judicial system rather than finding a way to deal with it as an alternative means of settling disputes.

There seems to be a mild inconsistency there. There may not be; I am not trying to be pejorative.

Mr. REYNOLDS. I understand. There were discussions last session, and indeed the session before under the Fair Housing Act, exploring precisely what we are talking about, and I do think that there are possibilities there.

It did not get to the point where they came to any kind of a resolution, but we are certainly prepared to do that kind of an exploration.

The CHAIRMAN. Well, I would ask the staff to give each of my colleagues the amount of time I had so they can have a long questioning period here, and let me just conclude this round.

I have many more questions on racial violence questions and break-ins and a few other things, unrelated, but I want to assure you, and I know you know it, that this piece of legislation is the highest priority of this committee with me as chairman in the first round here.

The sooner we can attempt to resolve something, the better. I would rather have it resolved; I would rather have us move on the discrimination that exists out there with some unison, a unified effort. But in the event that we cannot—and the reason I bother to tell you that is not a threat; it is merely to state that this is going to move quickly.

Mr. REYNOLDS. Good.

The CHAIRMAN. And I would like very much for whomever you will be assigning to deal with us on that to get engaged very rapidly, okay?

Mr. REYNOLDS. Yes, sir.

The CHAIRMAN. I yield to my colleague from Iowa, a State I have learned to love very much. [Laughter.]

Senator GRASSLEY. There is not a meeting we have that he does not say that last sentence.

Senator METZENBAUM. Does Iowa love Joe? That is the question.

Senator GRASSLEY. They are learning to; I read the newspapers.

Now, I want to visit with you, Mr. Reynolds, on two points; one, some latest developments on the Voting Rights Act and, secondly, on Grove City. My question on the Voting Rights Act goes to Section 5 and the fact that last October eleven of us on this committee wrote to the Attorney General about the Civil Rights Division's interpretation of Section 5 of that Act.

We are all interested in making sure that the Act provides the full extent of the protection which Congress intended. Our concern last October was that the Department in some cases might no longer object under Section 5 of the Act to voting plans which had a discriminatory result, and thus would be violating Section 2.

Both the Congress and the Supreme Court have made it clear how important Section 5 is to the Voting Rights Act. Now, in January, the Department promulgated new regulations in this area and the rule states that—well, let me read.

> In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2, the Attorney General shall withhold Section 5 preclearance.

So then my question is, what constitutes clear violation? I suppose another way for me to ask the question is, as a practical matter, how is this going to work?

Mr. **Reynolds**. Well, Senator, the way it will work is pretty much as it is outlined there. In those circumstances where the submitting jurisdiction has met its burden that, indeed, the change is free of discriminatory purpose and is not retrogressive, but there is evidence that is brought before us that makes it clear that upon implementation of this change it will have a result that violates Section 2, we would withhold pre-clearance until such time as that problem was cleared up.

Senator **Grassley**. Okay. Is it not likely that all such clear violations will violate Section 5 as well?

Mr. **Reynolds**. Well, when I originally looked at this, I think my reaction would have been to say yes. I think what we are talking about here is a very narrow class of cases and it will be an unusual case indeed where you satisfy Section 5 but you deal with the problem that is raised under Section 2.

Without getting too bogged down in the details of it, the best way that I can explain it is that Section 5 really deals with the plan as it is submitted to us and before it is implemented. I mean, preclearance by its definition is in terms of something that has not gone into effect that is submitted to be put into effect, and Section 5 deals with whether that particular change, as submitted, has a discriminatory purpose or is retrogressive.

Section 2 deals with what happens when you implement this change. In other words, if it is pre-cleared and it is implemented, what is going to be the result?

So it can be the case that in some circumstances where you can say that the change on its face presents no problem of discrimination, you would also include that it will, on implementation, have a result that flies in the face of Section 2.

In those circumstances, we have said that the pre-clearance process would say let us slow this down until we can sort through and cure that implementation concern.

Senator **Grassley**. And those are the only circumstances where there would be a difference?

Mr. **Reynolds**. I believe that is right, and I think those are few and far between, but where they are there, we would certainly use the pre-clearance process to prevent the change from going into effect until that particular problem was straightened out.

Senator **Grassley**. Would you disagree with the idea that Section 5 incorporates Section 2's standards?

Mr. **Reynolds**. Well, I think that Section 5 has its own standard, but I do think that it is also the case that in those circumstances where we are dealing with the question of implementation that the Section 2 results test is the relevant one to look at and to ensure that it is not the case on implementation, you know, that it will violate Section 2 or have the discriminatory result.

Senator **Grassley**. Well, then, you do disagree with wholesale incorporation?

Mr. **Reynolds**. Well, yes. I do not think it is a wholesale incorporation, and I do not think Congress intended that. We are dealing with two provisions that really have different impacts.

Section 5 is an administrative review process and Section 2 is really one that concentrates on the courts, and I think that there are two different burdens that adhere in both of those sections. So I do not think that it is one where they sort of are the same and one is a mirror image of the other.

But I think at the same time it is the case that, as I explained, Section 2 can certainly be very relevant in the Section 5 pre-clearance process.

Senator **Grassley**. Okay. I want to move on now to the Grove City bill, as opposed to the *Grove City* case. In past Congresses, we have heard testimony on legislation that would correct the *Grove City* case about overly broad coverage of the proposals.

You know, we heard testimony, I guess it was way back now in 1984—it goes back that far, I believe, when we had hearings on it—that farmers receiving USDA crop subsidies might be covered or grocery stores receiving foodstamps. Of course, you are aware of all these criticisms.

In your view, does the new proposal introduced in the Senate make any progress in narrowing the scope of the coverage so that we return to the status quo before the *Grove City* case?

Mr. **Reynolds**. Senator, I have looked at that. I think it is really the same bill that we had before; that is, it is called the Civil Rights Restoration Act, and I think the coverage continues to be as broad and sweeping as it was and that the farmers who indeed have crop subsidies would come under it and the mom-and-pop grocery stores would come under it if there are foodstamps that they use.

I believe that private corporations, if one plant at one point takes Federal funds, would be covered in their entirety. It is quite sweeping in its coverage, and I think that is probably not by mistake. It is worded in a way that is a bit vague so as to ensure that the interpretation would allow for even a broader coverage rather than a narrow one.

My strong sense is that the bill that the administration has backed in connection with the whole *Grove City* issue is one that very directly responds to the Supreme Court case and does it in a way that treats it with the areas of concern that have been identified, and I think in a very responsible way, and would be the better piece of legislation.

Senator **Grassley**. How about religious or church schools that may receive Federal support in some way? Are they treated as in past bills?

Mr. **Reynolds**. Well, as I understand it, under the Restoration Act they are, and there is a question that has arisen in connection with the whole debate with regard to funding of abortions under the bill, and I believe that at this juncture, anyway, that is an issue that is of concern because the broader bill does indeed contemplate that funding would be appropriate if indeed a college or university or any one of these entities received any money.

Our proposal would be to have an abortion-neutral position in that regard, and also a religious exemption that deals with a change in the religious tenet provisions to conform them with what Congress did in the Higher Education Act last year.

Senator **Grassley**. Mr. Chairman, I am done on this round.

The **Chairman**. Thank you.

The Senator from Ohio.

Senator **Metzenbaum**. Mr. Reynolds, you know, I looked at your report which we just got and it is obvious that you want the perception of the Department to be one of enforcing civil rights.

> "This document describes the enforcement activities and accomplishments of the Civil Rights Division of the U.S. Department of Justice over the past six years."

Then you go on and it says,

> "Their impact has been substantial in every area of civil rights enforcement—education, employment, housing, consumer credit, public accommodations, public institutions, voting, and criminal civil rights enforcement. It is with great pride that I have served as Assistant Attorney General of the Civil Rights Division during this period."

I think that is fine, but the thing that I have difficulty with is the fact that the public perception, the general consensus, is that your Department has not done the job. I am looking at an article here:

> Affirmative Action: A Vacuum at Justice? Meese Put No Blacks or Women in Top Jobs.
>
> Attorney General Edwin Meese, III, who has argued for voluntary recruitment of minorities instead of traditional affirmative action, has not brought in any women or blacks for senior policymaking jobs at the Justice Department since taking office 21 months ago.

I might say that was in November, and there still have been none.

> At Meese's senior staff meeting each morning, he is surrounded by white males. Of the three high-ranking women that Meese inherited from former Attorney General William French Smith, two have resigned. Only Victoria Toensing, a Deputy Assistant Attorney General in the Criminal Division, remains.
>
> The one senior black official whom Meese inherited, W. Lawrence Wallace, resigned this month as Assistant Attorney General for Management, leaving the Department with no blacks in policymaking positions. Wallace was running the management position on an acting basis when Meese took office in February 1985, and Meese made the appointment permanent several months later.
>
> Meese and Assistant Attorney General William Bradford Reynolds have been widely criticized by civil rights leaders for their opposition to minority hiring goals which the two men view as illegal quotas. Their Department is one of three federal agencies that have refused to follow federal regulations which require them to set minority hiring goals and report to the Equal Employment Opportunity Commission.

It goes on quoting women's groups, quoting civil rights groups, and my question to you is how do you account for the fact that the perception is so negative and yet you claim that the record is so positive?

Mr. **Reynolds**. Well, that is one reason we put this book out, and we intend to spread it as far as we can and circulate it as widely as we can because I think that misperceptions are fostered by people who do not know the facts or do not recognize or are unwilling to admit the facts.

What we want to do is to show that indeed the civil rights enforcement in this country has been every bit as vigorous, and perhaps, I think, in many respects, more vigorous than we have ever seen it before.

I think that has to get out so as to counter some of the rhetoric we hear from others who shape perceptions that suggest that we have been doing nothing in the civil rights arena.

Senator METZENBAUM. Well, how many blacks do you have as Presidential appointments in the Department?

Mr. REYNOLDS. I do not know the answer to that.

Senator METZENBAUM. You do not know the answer?

Mr. REYNOLDS. No.

Senator METZENBAUM. I do.

Mr. REYNOLDS. We hire by quality, not by color.

Senator METZENBAUM. Well, it is not very hard to tell a black person as distinguished from a white person. It is not very hard to tell a women as distinguished from a man. You have got one minority in the entire Justice Department as a deputy assistant attorney general or higher, and not one in a Presidentially-appointed job.

Now, if I am wrong about that, then please be good enough to correct me, but these are facts that we are dealing.

Mr. REYNOLDS. I am not sure, though, how relevant that is to the enforcement of the civil rights laws in this country.

Senator METZENBAUM. Well, it may not be, but it is——

Mr. REYNOLDS. Well, that is the issue that it seems we ought to address.

Senator METZENBAUM. Well, it is relevant to the enforcement of the Equal Employment Opportunity Commission because it is in that respect that I now wish to inquire of you.

You are one of the four Federal agencies out of more than a hundred which are defying the law and refusing to submit the information with respect to the number of persons employed in that categorization.

As a matter of fact, you recently claimed to a House subcommittee that you were not submitting any hiring goals because you had reached an understanding with the Equal Employment Opportunity Commission that you did not have to file this information, correct?

Mr. REYNOLDS. Generally speaking, I said yes, that we are not doing that; that what we are doing is indeed in accordance with the law and that what we are filing is acceptable over there, and that that is the understanding that certainly everybody is operating under.

Senator METZENBAUM. Mr. Reynolds, you and Mr. Meese are absolutely magnificent in fudging the facts. What you said to the committee was, "We have reached an understanding, an agreement with EEOC that the Department submission is acceptable," but the EEOC says there is no written indication of any agreement with the EEOC to the effect that there is an exception in the law for the Justice Department.

The latest letter to you on this subject from the EEOC says that you are failing to comply with the law. In addition, my staff spoke to the EEOC and they state that there is no such understanding.

Do you still claim that there is an agreement with the EEOC, as you told the House committee?

Mr. **Reynolds**. Well, what I will say and what I continue to say is that we submitted a report that is in full accordance with the law; that it has been accepted by the EEOC; and that that is the one we will file the next time.

Senator **Metzenbaum**. The EEOC sent you a letter, did they not? Did they not just recently send you a letter saying you are failing to comply with the law?

Mr. **Reynolds**. I do not know what the date—I know that we have received letters like that and we have gotten back in touch with them and explained to them that there is no violation of the law, and that that is a fundamental difference we have, Senator.

I believe in non-discrimination, and therefore I do not believe that we ought to have hiring programs that discriminate on the basis of race and sex.

Senator **Metzenbaum**. Whether you believe so or not, you are an officer of the law. You are an Assistant Attorney General. You are obligated to comply with the law. The EEOC says that you are obligated to comply with the law.

They told you in writing, "Many of the basic documents required in EEOC MD-707(a) have not yet been received. We are unable to complete the analysis of your affirmative action program."

You told the House you had an understanding with them.

Mr. **Reynolds**. We sent material over to them. What was the date of that letter?

Senator **Metzenbaum**. The date of that letter was December 4th, 1985.

Mr. **Reynolds**. I think we sent information since then in response to that letter.

Senator **Metzenbaum**. My staff talked to the EEOC staff yesterday and they said that is not the fact, and when you spoke to the House committee you very categorically said, "We have reached an understanding, an agreement, with EEOC that the Department's submission is acceptable."

The EEOC does not say that and you have nothing in writing from them stating that your filing is acceptable. Who said your filing is acceptable?

Mr. **Reynolds**. My understanding, Senator, is that the information we sent over is acceptable both under law and with respect to the EEOC requirements.

Senator **Metzenbaum**. Mr. Reynolds, you are here before us as an officer of the law, as the Assistant Attorney for Civil Rights. There is an Equal Employment Opportunity Commission obligation; four agencies of this government are not complying with it, and the Justice Department, the one that is supposed to be complying with it and has spent the taxpayers' money to put out this slick document—you are not even complying with the law that is applicable to your own Department.

How can the people expect you to go out and enforce the law? How can they have any confidence in you?

Mr. Reynolds. That is how mis-perceptions are generated, Senator. We are complying with the law. The law is one that compels people to act on a non-discriminatory basis, not to prefer people by race or gender in their hiring or employment activities. That is precisely the course we are following.

We have an affirmative action program. The affirmative action program is in place; it is working well and the hiring that we are doing under it is bringing increased numbers of minorities and women into the Department.

Senator Metzenbaum. Confirm that to me with the facts. Tell me which Presidential appointment holds office in your Department. Tell me which individuals in your Department, blacks, women, have any position of significance.

Mr. Reynolds. Well, I think all the positions in the Department are significant. We have 49.6 minorities and——

Senator Metzenbaum. Well, you know what I am talking about with significance; I am talking about ranking.

Mr. Reynolds. We have 49.6 minorities in the Department and 62.8 female employees in the Department as of February of——

Senator Metzenbaum. How many of the 49.8 percent are secretaries or at that category, filing clerks?

Mr. Reynolds. I am sorry. That was the Civil Rights Division statistics. I am sorry.

Senator Metzenbaum. What I want to know is—I am not talking about all the typists, I am not talking about the filing clerks, I am not talking about those people who drive the cars, those people who open the doors.

I want to know about people who are in a position to make policy, people having some responsibility. My understanding is, and the understanding of everybody who is at all familiar with this subject, that you have either zero or one, at the most.

Mr. Reynolds. We can give you the breakdown, Senator. The Department statistics on new hires is all I have now, if you would like that. We can provide you the other. I can certainly give you a breakdown as far as the Civil Rights Division is concerned.

Senator Metzenbaum. Can you give me a breakdown as to how many are in the entire Justice Department at the deputy assistant attorney general level or higher, and I think there are about 20 people at that level?

Mr. Reynolds. We will have to collect that and give it to you. I would not have that information off the top of my head. I can give it to you for the Civil Rights Division.

Senator Metzenbaum. Well, I think it is more than the Civil Rights Division we are concerned about How many deputy assistant attorney generals do you have in the Civil Rights Division?

Mr. Reynolds. I have got—well, there are 12 SES level employees in the Civil Rights Division that are at the section chief level and the special assistant level to me. There are 82 that are at the GS-15 and above level and 255 are at the GS-11 and above level.

Senator Metzenbaum. But I am talking about a level that has to do with policy. I am talking about a deputy assistant attorney general.

Mr. Reynolds. Well, I would include my section chiefs in that category. The way that we operate and the way that we conduct business, the section chiefs certainly are involved in all the policy decisions that go on in the Division.

Senator **Metzenbaum**. And how many section chiefs do you have?

Mr. **Reynolds**. Eight.

Senator **Metzenbaum**. And how many of those are black?

Mr. **Reynolds**. Two.

Senator **Metzenbaum**. And how many women?

Mr. **Reynolds**. Two.

Senator **Metzenbaum**. Same people?

Mr. **Reynolds**. No.

Senator **Metzenbaum**. Pardon?

Mr. **Reynolds**. No.

Senator **Metzenbaum**. How many of those are holdovers from the Carter administration?

Mr. **Reynolds**. Well, they were all in the Division in the prior administration, and indeed earlier, going back, I think, some number of years. Nat Douglas, who is the head of my Education Section, I promoted to that position, and Linda Davis is the head of my Criminal Section and I promoted her to that position.

Senator **Metzenbaum**. I have a number of other questions, but I have less than a minute left and I would rather wait for a second round.

The **Chairman**. Senator Kennedy.

Senator **Kennedy**. Thank you, Mr. Chairman.

I welcome Mr. Reynolds here this afternoon, and I was sorry that I missed your exchange with Senator Biden on the fair housing issues. We will come back to those issues, but I would like to make a comment just before getting started on the questions.

I want to thank the Chairman for arranging these hearings to question Mr. Reynolds about the Civil Rights Division. I think that that has been long overdue. In recent years, the Division, which had long been an advocate of civil rights, has, I believe, instead become its adversary. Under Mr. Reynolds, the Division has fought relentlessly in the courts to weaken the civil rights law that Congress worked long and hard to pass.

In all areas within its jurisdiction, the Division has urged the courts to adopt the most narrow and cramped interpretation of the statutes. It has fought tooth and nail against consent decrees and affirmative action plans to remedy past discrimination, and it has been repeatedly rebuffed by the Supreme Court in its efforts to outlaw such remedies.

The Division's friend-of-the-court briefs in this area and others show that the administration is no friend of civil rights. During this administration, the Civil Rights Division has never filed an amicus brief in a job discrimination case argued before the Supreme Court supporting an affirmative action plan or consent decree, while frequently filing amicus briefs in the appellate courts opposing these measures.

As head of the Civil Rights Division, Mr. Reynolds has argued, as I understand it, at least eleven cases in the appellate courts, but never once in those cases has he supported an employment discrimination claim made by a member of a racial minority or a woman.

In voting rights, the administration persistently urged an intense standard that is inconsistent with the views of Congress. When the 1982 amendments to the Voting Rights Act repudiated the intense standard, the Division shifted its attack to the courts, seeking to undercut our mandate through a flawed interpretation of the Act.

When they lost in the Supreme Court, they shifted the attack again by indicating that they would refuse to apply the proper standards to pre-clearance proceedings. When members of the Congress of both parties criticized that effort, the Division retreated to regulations that set an excessively harsh legal standard for victims of voting rights discrimination to meet in pre-clearance cases.

In short, under Mr. Reynolds, the Civil Rights Division has been conducting its own private war of attrition against the Voting Rights Act. It is time that Congress insisted he live up to his oath to faithfully execute the laws.

In the legislative arena, this administration has opposed the two bills that are of foremost importance to vigorous civil rights enforcement. The administration has consistently resisted our efforts to restore the law that bans discrimination in the use of Federal funds, and it has also resisted all of our efforts to give real teeth to the fair housing laws.

Now, with the Senate under new management, we intend to do our best to pass these measures and send them to the President, in spite of Mr. Reynolds' opposition.

The message that the administration will not support and enforce the civil rights laws has not been missed by those who oppose these laws. The gap between the household incomes of black and white families in the country is wider now than when the administration took office, wider, in fact, than it has been since the 1960s.

Congress and the country need to do more, not less, to reduce discrimination. We can only hope that someday the administration will get the message.

I understand that we had a pretty extensive exchange with the Chairman of the committee, Mr. Biden, on the question of fair housing enforcement mechanisms, and I do not want to duplicate or replicate that, but I would like to go back into that, if we could, in some of the time that we have available.

As I understand it, Justice filed 12 cases last year, is that correct, in fair housing?

Mr. REYNOLDS. Senator, the specific number of filings are, I think, contained in this book that I have given you.

Senator KENNEDY. Well, I think we will make it a part of the record, but as I understand it, it is 12; it is what you would consider a handful of cases. I am not trying to quibble about whether it is 12 or 14, but my information is that it is 12, and you do not know anything really to the contrary.

Let us assume that it is, unless you have some other information, and move on from there. The point that I want to get to is that most of these cases, or just about all of them, were big pattern or practice cases, were they not?

Mr. REYNOLDS. That is correct, absolutely.

Senator KENNEDY. Excuse me?

Mr. REYNOLDS. Yes, that is correct, they were.

Senator **Kennedy**. And I think all of us understand from the past enforcement of past civil rights acts that when you get pattern or practice cases and when you have a strong case, you get action. We have seen that. That is pretty well understood by all of us, certainly, on the committee and by yourself.

That is not what we are really talking about in the various questions of discrimination in housing. We are talking about the 4 to 5,000 complaints a year that come into HUD where they do not get action. That is what we are talking about, the alleged figure of more than 2 million incidences of discrimination in the areas of housing, 4 to 5,000 complaints a year getting into HUD, and the Justice Department taking a handful of cases.

We are just not coming to grips with the basic issue. We have administrative procedures under other civil rights acts which have been effective, with the exception of fair housing. That is what hours and hours and months of hearings and debates have pointed out.

Now, as I gather from your earlier exchange, you think that you can do it through the courts. You know, it is always interesting to me that we find the dichotomy in administrations about when to use the courts and when not to use the courts.

We go through a long period of time where we do not want to overload the courts with actions. Then we come out with an administrative remedy and we say, oh, no, we can do it much faster and much more effectively by running them through the courts.

I do not know what the average time is in terms of a fair housing complaint in a court now. Do you?

Mr. **Reynolds**. I do not know the average. I do know that both the private litigants that do this kind of activity as well as our experience, suggests that the time that it takes to go through the court system is tremendously expedited in, by far, the overwhelming majority of cases because the largest majority of them are resolved by consent decrees short of full-blown litigation, and therefore they do get through the process quite quickly.

Senator **Kennedy**. Yes, but we understand that the cases in the pattern or practice areas of discrimination, those cases are, by and large, the strongest cases that come through the Justice Department. I mean, we all understand that.

What we are talking about are the individuals that are suffering under the whip of discrimination in communities all over this country and where there is not action, and where if the individual goes into court and follows the judicial system, it may take them a year or it may take them 2 years. What they need is a house, not a court case.

I do not know what the average time would be in terms of the Federal court system, but in our courts they are talking 6 or 700-case backlogs. I bet that that is fairly common across the country.

The kinds of cases that we are talking about is when individuals go in and they are discriminated against because of the color of their skin or, in many instances, because they have children or are single parents, and they have not got the resources to be able to go 2 months, 3 months, 5 months, or a year to bring those cases, and you know that and I know it. Those people are not being served.

Lord only knows we want to find an effective remedy. The best remedy that we have been able to come up with is the one that has been included in our legislation. As I understand it, the response to earlier questions is that we really do not need that remedy because when we go on through the courts, we get a faster action, and that is just baloney, Mr. Reynolds. On this issue, that is just baloney.

Mr. **Reynolds**. Well, Senator, I do not think it is baloney. I think that the administrative process has a track record which is every bit as cumbersome and slow as the courts.

What I indicated to the Chairman is my sense is that there may be an alternative disputes resolution mechanism that would better serve the interests that we all want to serve in this process, and that we are more than willing to work with the Congress in order to see if we can achieve something that does indeed deal with that problem you have raised.

My real concern is, based on the track record in every other administrative process that we have dealt with in the government, that the ALJ response is one not calculated to speed the process up, but indeed more calculated to slow it down and to not deal with the precise problem that you are concerned with.

But as I said, we are more than happy and willing to work with the Congress to see if we can come with an alternate disputes resolution mechanism that would work that seems to expedite the process a little better.

Senator **Kennedy**. Are you going to send up an administration fair housing bill?

Mr. **Reynolds**. I believe the Administration plans to send up a bill, yes.

Senator **Kennedy**. Do you know when that is going to be?

Mr. **Reynolds**. I do not know the precise timing of that, Senator.

Senator **Kennedy**. Can you find that out and let us know?

Mr. **Reynolds**. Sure.

Senator **Kennedy**. You are the head of the Civil Rights Division.

Mr. **Reynolds**. As I say, I think that we are more than prepared to sit down and work with you in terms of dealing with an answer to that problem, which I think is probably not too well answered with the ALJ process, given the track record we have seen with administrative law judges.

Senator **Kennedy**. As you and I know, the Administrative Procedure Act is complicated. It applies to different agencies and different procedures all the way along. I had the good opportunity to be the chairman of the committee that dealt with the oversight on it, and it applies to different agencies. There are different ways in which it can proceed.

The hope in terms of the measures that we have included in this legislation was based upon the study of those other procedures, and to make this the simplest, least costly, and the most effective.

We have gone through another legislation, the immigration bill, that established administrative procedure provisions in that. Did you support those? Well, the administration did and the Justice Department did, in the immigration bill.

Mr. **Reynolds**. The ALJ provisions.

Senator **Kennedy**. I have been on that committee as well and spent a lot of time in immigration. Those seem to me to be a lot more complex than the ones we are talking about in here. That is why it does not seem that the explanation is based upon good reasoning.

Will you submit to us the data that the ALJ process is burdensome? Will you provide that for us as part of the record?

Mr. **Reynolds**. Yes, we can certainly provide ALJ procedures and, to the best we can determine it, what the lag time is and how they operate.

[Aforementioned follows:]

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 24 1987

Senator Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

This is in response to your letter of March 11, 1987, seeking additional information regarding Administration concerns with the administrative enforcement process outlined in S. 558.

As I indicated to the Committee in my April 7 testimony on proposed amendments to the Fair Housing Act, resort to Administrative Law Judges (ALJs) as the vehicle for resolving disputed claims of housing discrimination is unsatisfactory as an enforcement mechanism. We have had a wealth of experience in the Federal Government with ALJ procedures. Our analysis -- and that of others -- demonstrates that such procedures do little to expedite the process, are often cumbersome, and invariably prolong rather than contract the adjudication of claims.

I identified in my testimony five agencies whose experience with ALJs more than makes the point. As reflected in Attachment 1 to this letter, the processing time recently experienced by agencies under an ALJ system ranged from a low of 11.5 months to a high of 25.6 months. It seems to us overly optimistic to expect that a new ALJ system at HUD, patterned after the model already in place at other agencies, will produce any more streamlined or expeditious consideration of claims. Indeed the most recent comprehensive evaluation of ALJ procedures, conducted in 1980 by the Administrative Conference of the United States, is very much to the contrary. (See Attachment 2.) A sampling from that study reveals a stretch out from the time of filing with an ALJ to the time of an initial decision of some 113 days on the average at the NLRB, to some 993 days on the average at the Federal Maritime Commission. (See Attachment 3.) And the GAO report, to which you referred at the April 7 hearing, reports essentially the same phenomenon. (See Attachment 4.)

Since a central purpose for amending the Fair Housing Act must be to give the enforcement agencies the ability to resolve rapidly the simpler housing discrimination claims -- thereby offering the promise of meaningful relief -- there is ample reason to question the adoption of a new, cumbersome ALJ process that, by all available evidence, is destined to slow down rather than speed up administrative procedures.

Cost estimates provided to us by the Office of Personnel Management place the average real cost per ALJ per year at between $150,000 and $175,000. (See Attachment 5.) That is a handsome price to pay for a most imperfect solution to a persistent problem.

Our suggestion, as reflected in testimony before the Committee by HUD Secretary Pierce and by me, is the consideration of an alternative dispute-resolution mechanism. In contrast to ALJs, a number of federal agencies have had substantial success with arbitration in a variety of contexts. Approximately three dozen agencies utilize some form of alternative dispute-resolution mechanism, and five agencies[1] have well-established arbitration procedures outside the traditional labor context. The Congress, apparently recognizing the benefits of arbitration over the ALJ process, amended the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in 1978, replacing ALJs with arbitrators.

In a recent study prepared for the Administrative Conference of the United States,[2] the author found arbitrators to be efficient and far more adaptable to particularized agency objectives than the ALJ process, which the study found "positively Byzantine in [its] complexity."[3] The Merit Systems Protection Board arbitration program was recently evaluated by a team from George Washington University, and found to be "unequivocally more expeditious" than the ALJ process, approximately 40% less costly, twice as amenable to voluntary settlement, and equally fair in its procedures and results.[4]

These and other findings led the Administrative Conference last year to adopt a resolution (Attachment 6) encouraging agencies to utilize arbitration, and urging Congress "to permit executive branch officials to agree to binding arbitration to resolve controversies." The Conference recommendation found that formal administrative procedures, such as ALJs, often "waste litigants' time and society's resources" and "reduce the chances for consensual resolution." Arbitration procedures, conversely, have yielded decisions that are "faster, cheaper," and "less contentious," according to the Conference. The recommendation concluded that arbitration is particularly appropriate where delays and costs should be minimized, norms of decision are well-established, and technical expertise is desirable. These criteria speak directly to the Fair Housing context, where expeditious resolution of individual disputes is vital to the integrity of the statute.

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[1] Environmental Protection Agency (Superfund); Pension Benefit Guaranty Corporation; Commodity Futures Trading Commission; Agriculture Department; and Merit Systems Protection Board.

[2] Philip J. Harter, "Points on a Continuum: Dispute Resolution Procedures and the Administrative Process," (June 5, 1986).

[3] Id at 1.

[4] Id at 188-193.

The potential benefits of arbitration have also been recognized by the American Jewish Congress, which has actively advocated arbitration of individual housing discrimination complaints under the Fair Housing Act. That organization in 1984 prepared a specific proposal on such arbitration as a possible amendment to the Fair Housing Act. The bill that we are currently preparing offers this administrative enforcement mechanism as a constructive alternative to the ALJ process.

I trust that this responds to your request and I look forward to working with the Committee in fashioning Fair Housing legislation acceptable to all parties and truly responsive to the legitimate concerns raised about the current Act.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General

Enclosures

ATTACHMENT 1

SUMMARY OF STATISTICS

U.S. District Court

Average processing time for all civil cases = 7 months

Breakdown: 49% of all cases disposed of in 4 months
34% " " " " " " 7 months
12% " " " " " " 15 months
5% " " " " " " 19 months

Average processing time for civil rights cases = 13 months
(Employment cases only)

Breakdown: 30% of all cases disposed of in 9 months
30% " " " " " " 11 months
25% " " " " " " 18 months
15% " " " " " " 21 months

Average processing time civil rights cases = 11 months
(Other than employment cases, e.g., housing, voting)

Breakdown: 31% of all cases disposed of in 7 months
37% " " " " " " 8 months
21% " " " " " " 16 months
11% " " " " " " 19 months

Federal Labor Relations Authority

FY '86 Average case processing time = 467 days (15.5 months)

Breakdown: 75 days from initial charge to complaint by GC
212 days from complaint to ALJ decision
180 days from ALJ decision to FLRA decision

Social Security Administration

FY '86 Average case processing time = 421 days (14 months)
FY '85 Average case processing time = 330 days (12.8 months)

Breakdown:

FY '86 69 days from initial request to initial denial
65 days from req. for reconsideration to request for hearing
172 days from req. for hearing to ALJ decision
115 days from ALJ dec. to Appeals Council dec.

FY '85 54 days from initial request to initial denial
53 days from req. for reconsideration to request for hearing
165 days from req. for hearing to ALJ decision
111 days from ALJ dec. to Appeals Council dec.

National Labor Relations Board

*BASED ON THE PRESENT DATA FOR FY '84, '85, AND '86, THE TIME PERIOD FOR THE BOARD'S REVIEW OF THE ALJ DECISION CANNOT BE SEPARATED. IT HAS BEEN SEPARATED FOR THE PRIOR THREE FISCAL YEARS, HOWEVER.

FY '81 Average case processing time = 476 days (15.8 months)
FY '82 " " " " = 601 days (20.0 months)
FY '83 " " " " = 643 days (21.4 months)
*FY '84 " " " " = 661 days (22.0 months)
*FY '85 " " " " = 720 days (24.0 months)
*FY '86 " " " " = 767 days (25.6 months)

Breakdown:	FY '81	217 days in prehearing stages
		139 days case before the ALJ
		120 days before the Board
	FY '82	299 days in prehearing stages
		132 days case before the ALJ
		170 days before the Board
	FY '83	201 days in prehearing stages
		118 days case before the ALJ
		324 days before the Board
	*FY '84	150 days case before the ALJ
		511 days in all other stages of case
	*FY '85	148 days case before the ALJ
		572 days in all other stages of case
	*FY '86	135 days case before the ALJ
		632 days in all other stages of case

Veterans Administration[1]

FY '86 Average processing time = 398 days (13.3 months)

292 days in prehearing and hearing stages
106 days in Board review of decision

FY '85 Average processing time = 414 days (13.8 months)

285 days in prehearing and hearing stages
129 days in Board review of decision

Department of Labor

Average processing for Black Lung cases = 345 days (11.5 months)

Breakdown:
180 days from initial claim to initial decision
45 days for informal settlement process if needed
120 days from receipt by ALJ to ALJ decision

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[1] The VA does not use an ALJ system. However, after learning how their process works, it appears that the system is comparable to a typical ALJ system, but the ALJs are in fact presidentially-appointed "Board Members."

Senator KENNEDY. As you know, previous administrations placed considerable responsibility for filing fair housing cases on U.S. attorneys, and you testified before Congressman Edwards' subcommittee in 1983 that you brought that responsibility back to the Civil Rights Division because U.S. attorneys had so many other cases to attend to that they just did not have the ability to take care of this area as well.

Well, if the U.S. attorneys were too busy to give adequate attention to the pattern and practice cases, how can they possibly handle cases brought by the United States on behalf of individual victims of discrimination?

Mr. REYNOLDS. Well, again, as I discussed with the Chairman and I think is certainly a necessary part of the discussion on legislation, one of the things that this body has to do is to focus on what the resource requirements are going to be to enforce the kind of legislation that we are going to put in place.

And my sense is that if we are going to add this piece to the Federal civil rights statues and I think an amendment is needed here, then part of that deliberative process has to focus on what we need in terms of additional resources to make it a meaningful piece of legislation.

Senator KENNEDY. Well, we are going to do everything we can to pass that legislation. I believe that we can, and I would hope that we could do it with administration support on it.

You will submit the other information on the procedure, and I want to go to a different area, and that is dealing with racial violence. I understand that last month you indicated in a speech to the Florida Bar Association that there is no evidence of increasing racial tension in the country, and I was interested in how you explain the fact that the Justice Department's Community Relations Service, which is the only Federal agency charged with mediating racial and ethnic disputes, reported a 42-percent increase in racial hate incidents responded to between 1985 and 1986 alone, 194 versus 276, and a near tripling between 1980 and 1986, from 99 to 276.

Mr. REYNOLDS. Right. Those numbers were explained by the Director of the Community Relations Service, where he indicated that indeed incidents of racial violence by hate groups such as the Klan or Klan-related activity really peaked in 1982 and has leveled off since then in a gradual, declining fashion over the past 4 years, but that the incidents that they are cataloging—and they really have just begun to do any kind of a comprehensive data collection on this and it needs to be refined and improved—but that those incidents deal with a large variety of incident reports that really relate from the most minor to some that are relatively major, and some of which deal with problems of incidents of one ethnic group against another ethnic group, which does seem to be on the rise.

But there was a clear sense on the part of the Community Relations Service that we were not looking at anything in terms of a rising tide of racism in this country by reason of Forsyth County or Howard Beach, or indeed the incident reports that they were beginning to collect, but that indeed we had incidents and they were of a concern and that we certainly cannot take them lightly.

Senator **Kennedy**. Well, as I understand it, the Department tried to use an explanation that these remain isolated, but I understand that one State that does keep comprehensive statistics on what they call hate crimes—that is, the State of Maryland, which does have a hate crime reporting system to try and give at least the State officials the best information that can be developed on evaluating the increase incidence of racism and violence—estimates that the numbers have increased dramatically since 1981.

It is just one State; they do a comprehensive job. I think that those who have gone through and evaluated the way they did that evaluation would find it quite compelling. I would just say, because my time is up, I think all of us do not want to become burdened down with just having the comparisons, necessarily, just on statistics.

But I think what we are seeing is there does not appear to be a strong commitment really at every level of government in trying to eliminate the barriers of discrimination and prejudice.

The kind of incidents that turn ugly and violent and have some basis of racial degree do escalate and do rise, and I think in any kind of reviewing of information and materials which have been developed, I do not see how you could question that that has been something that has taken place in recent times.

I have the other material here from the Community Relations Service. I will submit it and then you can respond to it as part of the record, if you would.

Mr. **Reynolds**. Sure.

[Aforementioned follows:]

U.S. Department of Justice

Community Relations Service

Washington, D.C. 20530

January 14, 1987

Mr. Tom Olson
Press Officer
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W., Suite 700
Washington, D.C. 20425

Dear Mr. Olson:

With reference to our telephone conversation this morning, a review indicates that over the last several years the Community Relations Service (CRS) has responded to the numbers of racial-hate incidents indicated below:

1986 - 276
1985 - 194
1984 - 162
1983 - 167
1982 - 166
1981 - 117
1980 - 99

These incidents resulted from a range of actions by organized groups and individuals acting on their own, directed toward persons of a different racial or ethnic group. In approximately the last three years, an increasing number of incidents have involved harassment or violence against new refugee groups.

Please call if there are questions (492-5969).

Sincerely,

Dennis Wynn
Dennis Wynn
Media Affairs Officer

Mr. REYNOLDS. Let me just say that I agree there has to be that kind of commitment. One of the reasons that we have put this together is to show that we certainly have that commitment in this administration and have demonstrated it, by any measure that one wants to take, by the kind of law enforcement activity that we have undertaken.

I believe that it certainly has shown dramatic progress in terms of dealing with these kinds of racial violence incidents across the country over the past several years.

Senator KENNEDY. Could I make just one other statement, Mr. Chairman?

As I understood on the Sentencing Commission, the Commission's decision to not include the death penalty recommendations is a real victory for the independence of the Sentencing Commission and it leaves the political issue of the death penalty where it belongs, and that is in the Congress.

I think the Commission's action is completely consistent with the law that created it. I wanted to just make that comment.

Senator METZENBAUM [presiding]. The Chairman has made a comment on that, and you are absolutely right and I think the result in this instance is a good one.

Senator Simon.

Senator SIMON. Yes, thank you, Mr. Chairman.

Mr. Reynolds, we are pleased to have you here. I notice in reading your statement you say that serving as Assistant Attorney General in charge of the Civil Rights Division has not been without frustrations in that there is an impression out there that the Division is not doing the job that it should.

You say, "I am proud to be part of an institution within the Federal Government that is dedicated to, and has long been responsible for, the elimination of truly abhorrent and noxious practices."

There are concerns, and it is not simply a partisan kind of reaction. When, for example, in this same room Bill Brock, the Secretary of Labor, appears, even though we have differences, there is a general feeling on the part of the people on this committee that Bill Brock really wants to move ahead on the employment problem.

There is a feeling on the part of a lot of people on this committee that the Justice Department is dragging its feet in the enforcement of civil rights laws. It is conveyed in a variety of ways, when the Justice Department tries to prevent taking away tax-exempt status from Bob Jones University when it is discriminating and the Supreme Court rules eight to one on the other side; when you are asked right here by my colleague, Senator Metzenbaum, about employment.

Just the other day, I asked the Attorney General about the top 21 people in the Department of Justice, whether any of them were minorities or women, and he said he would have to get back to us with the answer.

Well, he knew the answer and I knew the answer, and I assume that has not changed from a few days ago when the answer was none. Are you aware of the answer? Is there a change in any one of the top 21 positions in the Justice Department?

Mr. REYNOLDS. There has been no change in the top 21 positions.

Senator SIMON. Okay. Then when I go over to the Civil Rights Division and I go according to your own chart here, the top four positions—William Bradford Reynolds—and I am going by my staff here, but I assume they are correct, as they always are—William Bradford Reynolds, white male; James P. Turner, white male; Mark R. Disler, white male; Michael Carvin, white male.

Does it make you at all uneasy that in a division that is supposed to enforce civil rights laws that all those top four people are white males?

Mr. REYNOLDS. No, Senator, no more than it makes me uneasy that Senator Kennedy is a white male, Senator Simon is a white male, and Senator Metzenbaum is a white male. Do you have any less allegiance to civil rights because you are a white male?

Senator SIMON. I would feel a lot more comfortable if the United States Senate had some blacks, had some Hispanics, and if I were appointing the United States Senate, I would try to make it a representative body, particularly if it had as its responsibility the enforcement of the civil rights area.

When you were asked, you said you did not know the answer to Senator Metzenbaum's question because you do not keep track of that sort of thing. What about recruiting? Do you at all try and see that you can, as you attract able people—and there is not a person here who suggests you should lower the ability factor at all—but that you try to get blacks, women and Hispanics in key positions?

Mr. REYNOLDS. The recruitment I can speak to is only in terms of what goes on in my Division.

Senator SIMON. I understand.

Mr. REYNOLDS. And I think that in terms of what we have done in the Division that we have an exemplary record in terms of the outreach program and the hiring that we have done as far as the employees and the attorneys in the Division, absolutely.

Senator SIMON. Well, the record does not suggest that. It is not just a matter of recruitment, but of results. Now, if I may, let us go into the area of housing. HUD says that there are approximately 2 million instances each year of housing discrimination.

I have this very fine, slick package that was just given to us and I look at the 4-year record and this map. It is a great-looking map with its colors and everything. I notice that in a 4-year period the State of Indiana, with 5,490,000 people, has had one investigation on housing discrimination. Is that a record you are proud of?

Mr. REYNOLDS. Our responsibility is to investigate all complaints of pattern and practice, and we do them as they come in and pursue them.

Senator SIMON. But does it not occur to you that if you look at this package, 5½ million people in a State—and you know from the Federal Government statistics that 72 percent of blacks who try to rent are discriminated against, 48 percent of those who try and purchase are discriminated against.

And you look at a map like that and it says Indiana, 5½ million people, and you have investigated one case. That does not——

Mr. REYNOLDS. Well, Senator, we have not gotten any referrals from you as to what discrimination there is there. It seems to me that if each Senator in their State has that many people and there is that kind of discrimination that it would be very helpful if we could get you to submit to us claims of discrimination in housing, and the other Senators. We pursue them as we get them.

Senator SIMON. Well, we would be happy to work with you.

Mr. REYNOLDS. Great.

Senator SIMON. In fact, we are going to work with you by giving you some legislation.

Mr. REYNOLDS. I would welcome that, too. We have been trying to get it for 2 years.

Senator SIMON. Well, we will give you some legislation, but the reality is you have been assigned this responsibility. As I look at a map like this, Kentucky, right next to it, 3,660,000 people, one investigation in 4 years.

All of this suggests to me here is a Civil Rights Division that is doing what it absolutely has to, but nothing more. Is that a fair appraisal?

Mr. REYNOLDS. No, I do not think that is fair at all. We have a certain amount of resources that Congress gives us. We have 18 people that we have doing this. If you look at the total number of housing cases we have around the country, there are a large number, all pattern and practice, all complex pieces of litigation that we are involved in.

We necessarily have to deal with complaints that are referred to us and they have to be in the pattern and practice area, and I would repeat that if indeed in the various States there are instances of discrimination, we would like to have those referred to us.

You know, there is a limited amount of resources that are available and we have the individuals that we have. We set up a special Housing Section. We have got a special litigation activity that is going in that Section, and if you look at the number of cases around the country, with 18 lawyers, it is a remarkable job in terms of enforcing the Fair Housing Act.

Now, I think that there is reason to put some teeth in that statute so that we are able to bring cases other than pattern and practice cases, which would allow us to go after many instances of the sort that you are suggesting that are not pattern and practice, but are individual housing problems. We cannot do that now; we do not have the authority.

But just in terms of the size of the Section, I think that it is an extraordinary amount of litigation that is being handled by 18 lawyers in the housing area across this country.

Senator SIMON. Well, this map does not just involve litigation; it involves investigations.

Mr. REYNOLDS. I think that certainly is right, and where the investigations result in problems and we can settle them short of litigation, we certainly try to do that. Our preference would be to get these resolved quickly and not have to go to litigation because once you get into litigation, it gets tied up for a long time and that does not really serve the interests that we are trying to serve.

So, certainly, you are right. The number of investigations is not translatable into full-blown litigation, and hopefully, if we are doing our job right, it will remain that way.

Senator SIMON. On January 4th of this year, you were quoted by the New York Times as saying, "We are actually getting to the bottom of housing discrimination." Do you really believe we are really moving on that and getting to the bottom of it?

Mr. **Reynolds**. I do not know what you are referring to and I do not recall the quote. I have testified here I think that housing discrimination is a major problem that we have in this country and it is one that we have to continue to focus on intensely, and I believe that legislation in this area would be very helpful to allow us to be more effective in the enforcement activity.

Senator **Simon**. All right. The quotation I am referring to is from the Sunday, January 4th, 1987, New York Times. It is an interview with you in which you are quoted as saying that, and I would ask that the full interview be put into the record.

Senator **Metzenbaum**. Without objection, so ordered.

[Aforementioned interview follows:]

[From the New York Times, Jan. 4, 1987]

Q&A: WILLIAM BRADFORD REYNOLDS—PERCEPTION AND REALITY ON CIVIL RIGHTS

(By Lena Williams)

Washington.—In the aftermath of the racial attack in the Howard Beach section of Queens and because of what many civil rights leaders view as a growing pattern of racially motivated violence around the country, the Department of Justice has found itself accused of failing to enforce the civil rights laws.

At the center of such attacks is William Bradford Reynolds, Assistant Attorney General in charge of the civil rights division, a Reagan appointee whose promotion to Associate Attorney General was rejected by the Senate because of complaints about his record on civil rights enforcement.

Following are excerpts from an interview with Mr. Reynolds in his office here this week:

Question. Some critics have said that under this Justice Department, civil rights enforcement has virtually come to a standstill in housing and employment discrimination, as well as other areas. How do you respond to such criticism?

Answer. Those critics clearly haven't looked at the record. The civil rights enforcement activity in the last year has been greater and more vigorous than it has ever been in the history of the civil rights division. And that's whether you measure it in terms of cases brought, investigations initiated, the kind of relief we are obtaining or numbers of people who are beneficiaries of that relief. The critics shy away from any kind of confrontation with the record or looking at the record, and in very general, broad-based rhetoric, level a charge that has absolutely no basis at all.

Question. When you talk about the record, could you be a little more specific?

Answer. We have more criminal prosecutions than ever before, and our success rate is up in the 80 percent level, which is the highest it has ever been. In the Voting Rights Acts enforcement area, we are obtaining more relief that is to the advantage of minorities in this country and their ability to exercise the franchise than you have had at any time in the history of the division. In the employment area, the kinds of cases are are bringing and kind of remedy we are getting, exceeds quite significantly anything that has been gotten by the division anytime in the past. The same is true with housing; we're actually getting to the bottom of housing discrimination.

Question. What is the difference in Ku Klux Klan activity now, compared with six or seven years ago?

Answer. We've had major victories in criminal prosecutions against the Klan. We have significantly interfered with, defeated and brought to an end a large measure of Klan activity. That's not to say that we've eliminated the Klan yet in all places where it exists, but it is fair to say we've broken the back of the Klan in terms of any major nucleus of activity.

Question. But there is a perception that the division is not actively enforcing civil rights laws. Why is that?

Answer. The perception's there because the political rhetoric controls the attitudes that you have. The man on the street knows what we are doing only to the extent that you get any honest, faithful reporting by the media as to the record of this Administration. It has not been that way. The major media outlets in this country have given an overabundance of attention and prominence to critics who rail in rather broad-based and general ways about the fact that there's a cutback on civil rights enforcement and nobody's doing anything.

Question. Some civil rights leaders say the Administration has to bear some blame for the incidents in Howard Beach, at the University of Massachusetts and other racially motivated incidents in recent months. How do you respond to that?

Answer. It is the case that people are always ready to cast blame elsewhere and say that it's somebody else's fault. The reality is that this Administration, in its policies as well as its practices, has had a pro-civil rights enforcement agenda from the beginning. The civil rights program of this Administration is one that has done more to break down the kind of Howard Beach resistance that we saw in that particular locality and other places in this country than it has to foster that kind of outrageous behavior.

Question. If you have segregated housing, doesn't it follow that you will also have a segregated school system and often a segregated workplace?

Answer. If you have a community that discriminates in housing, it will be the case that it is also a community that discriminates in other areas. I think that the root of the problem is that there are people of a mind to discriminate. And where we find that, we have to go after them on all fronts, which is what this Administration has been doing.

Question. Do you think you've personally been unjustly maligned?

Answer. This is not an easy job because the issues are controversial, emotional, and people feel very deeply about them. Whenever you are in that kind of a hot seat, a lot that is going to be written about you is driven by where people stand on different sides of the issues. I do think it is unfortunate that as a result of that, a lot of the characterization of me has been sort of as a hasty, insensitive, mean kind of an individual who does not care about these issues or think very deeply about them. That is about as far off the mark as one can get.

Question. Is there ever a temptation to lash back?

Answer. No. I've never had that. It would probably be totally counterproductive, but it's not in my nature to react that way. I'm not sure what I'd say if I tried to lash back.

Question. You say that you don't lash back or like to engage in personal attacks, but didn't you personally attack Associate Justice William J. Brennan Jr. of the Supreme Court?

Answer. I did not make a personal attack on Justice Brennan. I think the headlines that accused me of that misrepresented and misstated my speech. My speech responded to Justice Brennan's public speeches, which laid out a philosophy that I took issue with. At no time did I attack him personally or suggest there was any lack of respect for the Justice or for the institution. Justice Brennan and I have discussed since, in a very cordial and friendly conversation, and he said he did not regard it as a personal attack and felt it was the kind of debate that appropriately should be carried on.

Question. Some Congressional leaders have accused Attorney General Edwin Meese of promoting you to the position of Associate Attorney General, although the Senate rejected your nomination to that post. They cite, for example, your involvement in investigating the Iran arms deal. Are you acting as an Associate?

Answer. I am one of a number of assistant Attorney Generals, and I do the bidding of the Attorney General. There is nothing at all inappropriate for him to turn to me, or to anybody else in this department to assist on a crash program that needs to be staffed, at the highest levels of the department, in order to achieve something that the President has asked be achieved in an impossible time schedule. I don't think there was anything that occurred during my confirmation hearings that would remove me as a possible candidate for the Attorney General to turn to.

Senator SIMON. First of all, if you need more than 18 attorneys to do this job, have you requested more than 18 attorneys?

Mr. REYNOLDS. Well, actually, we made a budget request that asked for essentially what we had last year in terms of the enforcement capability for the Division, and if there is a new Fair Housing Act, then I think we would reassess that.

Senator SIMON. I would just add, and I do not want to take more time that I should right now, Mr. Chairman, but it just seems to me that if, instead of 18 attorneys, you were to have two attorneys who really moved aggressively, and then had a few other people who were out in the field, this map which looks so anemic could look appreciably better.

I would urge that we really get some backbone in the enforcement of the civil rights laws.

Mr. **Reynolds**. All I can answer, Senator, is that the litigation process is not quite that push-button.

Senator **Metzenbaum**. You have a little more time, if you want.

Mr. **Reynolds**. I think that the idea that two attorneys acting energetically could somehow compile a better record is one that I have a hard time understanding.

Senator **Simon**. Well, I have seen a few people who were really dedicated do amazing things and I am convinced it could be done.

Let me just add, my colleague, Senator Kennedy, asked about racial violence. I was on a Chicago radio call-in program recently and a woman called in and said, "The reason I do not have a job is all the blacks are getting the jobs." There is no question that the unemployment in this Nation adds to the friction in this Nation.

From the Civil Rights Division, where I am sure you have to recognize that, have you discussed with others that we really ought to do some things to lower that unemployment rate and make employment of people in this country a greater priority so we can reduce racial friction?

Mr. **Reynolds**. Well, I certainly think lowering the unemployment rate is certainly a necessary and essential goal. I think, though, that the Civil Rights Division has a mandate that deals with enforcing the civil rights laws.

There are a number of different concerns that impact on the unemployment rate in this country, and many of those do not come within our responsibility or under our tutelage, so that it does seem to me that in terms of the mission that we have, I think that we have to ensure that the equal employment opportunity laws are enforced; that the principle of non-discrimination is one that is adhered to across the board with respect to all people in this country, and to deal with that enforcement activity as vigorously as we can.

In terms of how one responds on a number of other fronts dealing with the unemployment problem, I think that there are a whole host of very serious and problematic kinds of considerations that impact on that that certainly deserve serious attention at all levels, not only the Federal Government level, but State and local and in the private sector. Certainly those activities are ones that are being undertaken, as you indicated, by the Department of Labor, for example, with Secretary Brock, who has in large measure the primary responsibility in that regard, and I think elsewhere in the government.

But our ability to deal with that whole host of issues is one that is very much determined by the civil rights laws that are on the books and dealing with equal employment opportunity questions in a litigative context, and certainly we do that, I think, in an extraordinarily effective manner.

Senator **Simon**. I would just add in closing, Mr. Chairman, that I would really hope that your Division could lead, and not simply do what may be required by the law, or even less in the case of the EEOC requirements; that you really provide the kind of leadership that I think was envisioned for your Division, and that you and your colleagues—I guess I would recommend a brain-storming session some evening. Just get off in the woods by yourselves, a dozen of you, and talk, just discuss whether you are really contributing to this Nation in this field as much as you could be and should be.

Senator Metzenbaum. Do you think they might get lost?

Senator Simon. I would hope not—well, on second thought, maybe it would be a good thing if they did get lost, Senator Metzenbaum.

But, seriously, I think some reflection—sometimes all of us get so bogged down in the day-to-day things that we lose sight of the big picture, and the big picture demands leadership, and it is leadership, frankly, that I do not see coming from the Civil Rights Division at the present time.

Thank you, Mr. Chairman.

Senator Metzenbaum. Thank you.

I have a few more questions. I am interested in that Louisiana case where the Republican National Committee paid for voter challenges in several parishes. These were precincts where Mondale had received more than 80 percent in 1984.

In some cases, we know that the Republican National Committee asked the State officials for lists of black voters and they sent postcards into these precincts. Some of these parishes were 95 to 99 percent black. In fact, in Rapides Parish, 21 percent of the voters are black; yet, 95 percent of the 2,168 challenges were black.

If the postcard was returned undelivered to the sender, which was up in Chicago, the Republican National Committee arranged for the voter to be challenged. The Louisiana Democratic Party sued in the State court and they won an injunction.

But there was a law violated, apparently. The head of the Louisiana Democratic Party said, "You have to view this in the historical sense. Until about 1965, you did not have universal suffrage in Louisiana. There are a lot of folks who feel that if they have to appear before the registrar of voters to prove their eligibility, it will cost them money or they will end up in jail." This was almost deja vu of the hearing on the Chief Justice, only that was in Arizona and this was in Louisiana.

Now, when you were asked about this issue last month by the House Judiciary Committee, you said that the Department did investigate, but since the investigation did not reveal that the Republican National Committee action "had impacted adversely on minority voters in any jurisdiction," and since the practice was discontinued, you "were able to close that part of the investigation."

Now, I practiced law for a good many years and I never heard of any law violation that you did not get prosecuted for if you had violated the law just because you quit or because you did not think it affected the results.

Now, do you mean to say by your testimony before the House committee that a deliberate and systematic attempt by a major political party to eliminate black voters from the voters register is not worth a full and serious investigation and an indictment, if that is appropriate?

Mr. Reynolds. Well, we did do an investigation. Indeed, what we did conclude is that there was an injunction that was issued by the court quite promptly, a preliminary injunction that then became a permanent injunction; that the activity that had been generated really did not get started and that there were no individuals who had been adversely affected in terms of exercising their franchise.

Therefore, since it was estopped before it got started, we did not pursue the investigation further.

Senator **Metzenbaum**. It did not get stopped before it got started. Actually, there had been challenges of 2,168 individuals. You know, you have got to put yourself in the position of these people. I cannot and you cannot, but the fact is these people did not have the franchise previously.

Now, somebody comes along and raises an issue about their right to vote and we can say, well, all they had to do was go in and make their point. But the fact is the Justice Department walked away, and one has to wonder whether or not they walked away because it was the Republican National Committee that was involved in this undertaking, or why.

Let us assume this: you learn of an insider trading scandal. You know that the insider is doing actions in the marketplace that violate the law; there is no question about it.

But by happenstance and for circumstances that nobody really can explain, all the shareholders who normally would be affected adversely by that kind of insider trading, because they would have given up their stock to the insider and he would have been able to buy it at a lower price than it was really worth—by happenstance, the stock goes up, so they were not hurt.

Would you not still think you ought to prosecute the insider? He violated the law.

Mr. **Reynolds**. Sure. I think that if you had that situation, we would have gone forward. But in this one, that is a much different hypothetical and this is one where the program that was conceived—and I think they did indeed send out the postcards—was one that was stopped because people went to court quite promptly and the court ended it and there was no—in fact, I think it was the agreement of all of us that looked at it that we could not find—a violation of the Voting Rights Act that would allow us to go in and prosecute in that circumstance, and that was the conclusion of everybody who looked at the matter.

Senator **Metzenbaum**. Who is "everybody?"

Mr. **Reynolds**. Well, the people in the Voting Section who are responsible for evaluating these and giving me a recommendation.

Senator **Metzenbaum**. Did you ask the candidates who were up? Did you ask the Democratic chairman? Did you ask objective individuals? You know, one gets the feeling—and it is impossible to come to any conclusion except this—that this was a perfidious activity engaged in by the Republican National Committee in order to keep black voters from going to the polls and to affect the outcome of the election.

They get caught and there is an injunction, and the Republican Attorney General takes a walk instead of going forward and completing the investigation and bringing an indictment, if it were appropriate.

Mr. **Reynolds**. Okay, that is one way to miscast the facts as a Democrat in the Senate.

Senator METZENBAUM. Tell me how you would cast it. You put it in your words; you are a Republican.

Mr. REYNOLDS. There was a voter purge arrangement that was put into place. I think regrettably for those people involved, they indeed targeted places that they should not have targeted.

I think if it had gone forward, it would have been a Voting Rights Act violation, but that indeed it was prevented from going forward in that there were no people who suffered in terms of their ability to exercise the franchise.

In those circumstances, given the resources we have, we did not see a basis to pursue a Voting Rights Act violation that we felt, if it went through the courts, would come out the wrong way.

Senator METZENBAUM. Do you think that by reason of your failure to act, the people who participated in this action will be deterred from doing it again?

Mr. REYNOLDS. I would quite definitely think that anybody who was involved in that would be deterred from the kind of activity that was suggested there.

Senator METZENBAUM. Mr. Reynolds, the afternoon is wearing late, but I do want to say that you claim a prodigious level of enforcement and you give us this fancy-looking book as we start the hearing today. You refer to your participation in 96 voting cases.

But when I cut through the facts, the Department has actually come into court and filed only 34 cases to enforce laws to prevent voting discrimination. Is that not the fact? I will direct you to——

Mr. REYNOLDS. I am not sure where you are getting the 34.

Senator METZENBAUM. Well, I will give it to you. You have 44, but you take off ten because ten of them were not voting rights cases. Ten were cases where the United States sued under the Overseas Citizens Act. These were uncontroversial and they were consent cases. Those are not really civil rights cases.

Mr. REYNOLDS. We do not count enforcement of the Overseas Citizens Act?

Senator METZENBAUM. Those were consent cases.

Mr. REYNOLDS. There are a lot of cases we have—in fact, some of the 34 were consent cases.

Senator METZENBAUM. Those were not civil rights cases, those ten, were they?

Mr. REYNOLDS. As I view it, that is a law that Congress has put on the books as a civil rights law that protects the voting rights of people in this country, and I am a little bit surprised that you throw them out as ones we do not count.

Certainly, I have the responsibility to enforce that law and it is a voting rights act and I would say that it counts as much for enforcement as another. Certainly, if I turned my back on those, you would be the first one to stand up there and criticize me for not having brought them.

Senator METZENBAUM. No, no, we are not asking you to turn your back on them, but they are not civil rights cases in the true sense. They have to do with corporate officers and servicemen and others who are living abroad, nothing to do with discrimination.

We are talking about cases having to do with discrimination. There was no discrimination in any of those 10 cases.

Mr. Reynolds. Well, again, they were all cases protecting the right to vote, which, it seems to me, is central to what the enforcement effort ought to be about. Whatever the reason is to deny people the franchise, I would say that our job is to ensure that that does not go on.

In terms of the responsibility we have, it would be, I think, an embarrassment if I were to sit here before you and say that I really felt they were insignificant and we could forget about that.

Senator Metzenbaum. I am not saying insignificant. I am saying they are not civil rights cases.

My staff called six public interest organizations; they did not have time to call more. We found that in the same 6 years you filed just 34 cases, these six organizations filed at least 290 voting rights enforcement actions, and we only called six organizations.

About 200 of those have been resolved. The plaintiffs lost only 4 of those 200 cases.

Are these not cases that the Department of Justice really should have brought?

Mr. Reynolds. Well, I am not sure that I would conclude that. One, I do not know that they came to our attention. Two, if they were cases that were out there being litigated, my sense is, no, we would not go in and double-team on it; that we would allow that litigation to continue and to work its way through the system with the lawyers that were on the cases.

So I would say that probably no, they would not be cases that we would have brought because we would have recognized that they were done by the private sector. Indeed, given the whole operation that we have in the Civil Rights Division, we certainly rely on private litigation to deal with enforcement of these laws as a team player and are happy that they do it, and do it energetically.

Senator Metzenbaum. As a matter of fact, is it not true you have actually entered some of these cases for the sole purpose of opposing attorneys' fees for successful private plaintiffs?

In fact, I know in one particular case you filed an amicus brief opposing attorneys' fees to the prevailing plaintiffs in *Leroy* v. *Houston.* That is hardly a case about which you should have any pride or claim that that is one of the 96 cases you were involved in.

Mr. Reynolds. Well, I think you have the facts wrong there. Actually, we came in with regard to the attorneys' fees there because the effort was to get attorneys' fees notwithstanding that they were not the prevailing party.

The statute that we are dealing with says prevailing party, and therefore we filed in that case. I believe in *Leroy,* we may have been invited in.

Senator Metzenbaum. The plaintiffs won in *Leroy,* as I understand it.

Mr. Reynolds. No, that is not correct. The issue that revolved around the attorneys' fees issue, the plaintiffs lost on.

Senator Metzenbaum. Yes, but they won in the case, did they not?

Mr. Reynolds. Well, again, as I say, the issue that they were trying to claim attorneys' fees on, they lost.

Senator Metzenbaum. Well, it seems to me that in 6 years, with 28 attorneys, I can find only 34 actions to enforce the voting rights laws. Of the 96, in 34 cases you did sue to enforce voting rights. In ten cases, they were matters where the United States sued with respect to overseas citizens, non-controversial matters, consent cases.

In 16 cases, the United States intervened mostly to file a brief clarifying the law. In 12 cases, the U.S. filed amicus briefs, and in 24 cases where the United States was the defendant, there was mostly a pre-clearance declaratory judgment, so that our files indicate that your 28 lawyers in six years have filed 34 voting rights cases.

If you want him to speak out, I have no objection, Mr. Reynolds.

Mr. REYNOLDS. No. I was just checking. The 24 where we were defendants were really ones where we were enforcing the Voting Rights Act. The way the process works is there is a jurisdiction that seeks to bail out of the statute. By statute, we are named as a defendant, and therefore we join the issue as to whether they are entitled to bail out.

The other ones that are on the defense side are in circumstances where we object to a submission and then they come into the D.C. Circuit and we are named as defendants in that litigation where they are trying to pre-clear over our objection.

Senator METZENBAUM. Yes, but in those cases, my only point is they do not belong as a part of any claimed effort on your part to defend the civil rights of individuals. Those were 24 cases in which you went in not on the side of the plaintiff, but you went in to defend the jurisdiction, that the court had jurisdiction of the case.

Mr. REYNOLDS. No, that is wrong; you are wrong on that. We went in on behalf of the minority interests who, if we did not go in, the jurisdiction would be out from under the Voting Rights Act, or we went in defending the minority interests where we had objected and they went to court to have the District Court in the District of Columbia seek to have something pre-cleared that we thought was going to offend the minority interests. So I think you are just misinformed on that.

Senator METZENBAUM. Well, my understanding of it is that you did not go in on behalf of the individual for his or her civil rights, but rather went in merely to assert your claim of jurisdiction, that the court had jurisdiction, and to get a pre-clearance declaratory judgment that jurisdiction belonged in the court, but that you were actually not a party to the litigation as far as supporting the plaintiff's position.

Mr. REYNOLDS. Well, Senator, that is why we hand this out because I think that you do have a problem with your facts, and one of the things we are concerned about is that misperceptions are shaped by rather broad statements that you and some others make without regard to the facts or unencumbered by facts.

What we want to do is put the facts out there to show that the enforcement record is indeed every bit of what we say it is, as opposed to what you claim it is without the benefit of this kind of information.

So I would certainly welcome you to read this because I think it may well clarify some of the misunderstandings that you are wrestling with.

Senator METZENBAUM. Well, Mr. Reynolds, I am not going to belabor the point with you, but I will say to you that although you have a slicker document than I have, I am not sure that the presentation is slicker or that the facts are totally in conformity, because, as I started off originally, the almost unanimous perception of your Department in the last 6 years is that you have been remiss in your responsibility to enforce the civil rights laws of this country.

Regardless of what the graphs show or the pretty pictures show, I do not think that you are going to change that perception, and you surely are not going to change it until you get some blacks and women in responsible positions in your Department.

Having said that, I will not go over the same material over and over again. I yield to my colleague, Senator Simon, with the request that when he concludes that he shut down the hearing.

Senator SIMON. Yes.

Mr. REYNOLDS. Senator, let me just say that I am sure that there are few people slicker than you in the presentations.

Senator METZENBAUM. Well, I am not trying to be slick with you. I just am trying to—just the facts. Remember, there used to be a good TV show, just the facts.

Mr. REYNOLDS. Right, and I would like you to read this and then we can maybe go back and talk about these things because I think that the problem is you do not have the facts and that the misperceptions are shaped by a lot of broad statements that you make that really are so removed from what reality is that it tends to undermine what the real record is.

Senator METZENBAUM. When did this come out?

Mr. REYNOLDS. We just received this; it just has come out.

Senator METZENBAUM. It just came out?

Mr. REYNOLDS. Right.

Senator METZENBAUM. In all honesty, Mr. Reynolds, we just got it in the middle of a hearing.

Mr. REYNOLDS. Right.

Senator METZENBAUM. And it is pretty hard for us to go behind some of the graphs and pictures while we are sitting here and you are here with us.

Mr. REYNOLDS. Right.

Senator METZENBAUM. So I would say to you that, indeed, it looks nice, but I am not sure the facts are quite as nice as the looks of this presentation.

Mr. REYNOLDS. Well, that is why I invite you to read it and peruse it.

Senator METZENBAUM. Well, I intend to. In fact, I have it at the top of my reading list for tonight. [Laughter.]

Mr. REYNOLDS. Great. Thank you.

Senator SIMON. And I shall be very brief, Mr. Reynolds. First, while my colleague, Senator Metzenbaum, is here, you said to him, "you have a problem with your facts." I think our concern is that maybe you have a problem with your attitude at the Civil Rights Division.

I note in your statement—let me just read:

> We have opened up the enforcement apparatus under our multiple Federal antidiscrimination statutes so that the civil rights protections mandated by these pieces of landmark legislation are now available in equal measure to all Americans rather than being regarded as a special entitlement of one or two selected groups.

Are you not really saying we are moving away from serving minorities in the Civil Rights Division?

Mr. REYNOLDS. No, no. I think that that serves minorities much better than if we were to view these civil rights laws in one-dimensional terms. We are a multi-ethnic, multi-racial community in this country and I think that it is terribly important that the civil rights laws are viewed as applicable—the protections are applicable—to all individuals in equal measure, and that we do not interpret them in a way that tends to deny benefits to some and grant benefits to others.

I think it is important that the non-discrimination principle adheres across the board, and I think that is precisely the point that is made in that sentence you read.

Senator SIMON. But I guess some of us have the feeling, and I do not mean to keep Senator Metzenbaum.

Senator METZENBAUM. That is all right.

Senator SIMON. Some of us have the feeling that the Civil Rights Division right now is primarily oriented toward trying to help white males.

Mr. REYNOLDS. Well, over 97 percent of our employment cases that we are involved in are geared to protecting minority interests, the interests of women, the interests of ethnic groups, and on the side of those people who are claiming they have been discriminated against and want protections against discrimination.

That is the overwhelming majority of the litigation that we are involved in and have been involved in for the last 6 years, over 97 percent.

Senator SIMON. Let me just add a couple of other things in closing.

I am introducing today the Hate Crimes Statistics Act, which would require the Attorney General to acquire data about serious crimes which manifest racial, ethnic or religious prejudices.

I am also advised that the record should be kept open for 48 hours for any additional questions. Let me just add I do not think there is anyone on this committee who does not respect your integrity, and if you were up for Secretary of Transportation, you would get a unanimous vote from this committee.

But that does not happen to be the area where your responsibility is and there is the strong feeling that I share that the kind of real committed leadership that ought to be there is not there.

I hope you will reflect on what history is going to say about your leadership here 50 years from now and serve not only in a dedicated way—and there is no question in my mind that you are putting in a lot more than your 8 hours a day, but the question is are you really providing the leadership that is needed. I hope we can get that.

Senator SIMON. This hearing stands adjourned. Thank you.

Mr. REYNOLDS. Thank you.

[Whereupon, at 4:37 p.m., the committee was adjourned.]

[The statement follows:]

STATEMENT

OF

WILLIAM BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

Mr. Chairman, I appear here today in support of a requested FY 1988 authorization for the Civil Rights Division of 400 full-time permanent positions, 420 work years and 26,792,000 dollars.

This budget request represents a resource commitment to continue the present civil rights enforcement program at its current energetic level. The only changes in this year's request from the one the Department submitted last year are a reduction of four full-time positions reflecting improved efficiencies from management initiatives, a slight dollar increase to accommodate uncontrollable increases such as pay raises, and an increase of $800,000 to support the projected escalating costs of expert-consultant fees in our litigated cases. In essence, we seek the same resources that the Congress has provided for the last three years. We project that with this level of resources we will be able to continue our highly active law enforcement efforts and even show some increased enforcement activity funded by this appropriation through more efficient administration, aided in major part by enhanced automation and other measures.

I have served as Assistant Attorney General for Civil Rights for almost six years. During that period, as you know, we have had frequent occasion to discuss the approach and commitment of the Reagan Administration to the enforcement of the civil rights laws. Before Congress, and otherwise, I have undertaken to explain that, with the exception of certain decisions relating primarily to the proper legal remedies to be urged on the Courts when discrimination is uncovered, the Reagan Administration is following very much in the law enforcement footsteps of prior administrations of both parties. Discrimination on the basis of race, sex, ethnic origin, handicap and religion is intolerable, immoral and, as set forth in federal statutes, illegal. I am proud to be part of an institution within the federal government that is dedicated to, and has long been largely responsible for, the elimination of such truly abhorrent and noxious practices from our social order, and I am equally proud to have been able to carry on that fine tradition.

My tenure as Assistant Attorney General has not been without frustrations, however, principally in connection with efforts to establish in and out of Congress that this particular institution -- the Civil Rights Division -- remains true to its mission. When we have dared to question and test the efficacy of certain remedies -- like quotas and busing -- or when we have asked the courts to entertain slightly variant approaches to civil rights issues, we have been routinely greeted in some circles with politically-charged condemnation. Our attempts measurably to improve and to perfect enforcement tools and remedial techniques have been denounced by those who have grown accustomed to the *status quo* -- egged on at times by the media -- as "backsliding" or "soft on civil rights."

When a group of white youths in Howard Beach, New York, recently attacked some black men at a pizza-parlor, the bizarre charge was made that blame for the incident rests on the shoulders of this Administration because of the climate created by its civil rights policies. When Klansmen some weeks ago attacked peaceful marchers in Forsyth County, Georgia, or when misguided students abused a black cadet at the Citadel College, it was laid on our doorstep with the same rhetorical flourish. Yet, while others rail aimlessly, the Department's Civil Rights Division, as it has in hundreds of other cases over the years, acted promptly through the FBI in each of the incidents mentioned to determine if there occurred any violation of federal law; and we stand ready to prosecute if warranted.

In this hearing, it is both necessary and appropriate once again to spread on the record the extraordinarily active and effective achievements of the men and women of the Civil Rights Division. I trust that by so doing we will not only receive a reaffirmation of *your equal commitment* to civil rights through your authorization to continue this enforcement program, but also will be able to lay to rest the absurd contention that this

Administration is not fully dedicated to assuring the civil rights of all citizens through the aggressive enforcement of laws passed by Congress for that purpose.

In order to provide a complete documentation of the activities of our Division and to avoid any mistakes or misunderstandings of what we have and have not been doing, I requested that each of the Division's component Sections prepare a detailed account of our enforcement activities in preparation for this hearing so that a full and comprehensive report of the true record of accomplishments can be made a part of the record of this hearing. This effort fully demonstrates that, with the smallest budget of all the Department's litigating Divisions, Civil Rights has made a tremendous impact.

In sharing this information with the Committee -- and giving it wide circulation otherwise -- we issue the ultimate challenge to all those critics who reflexively describe the Justice Department's enforcement record as "lax," "in retreat," or "nonexistent." We stand on the record. That record, if reviewed honestly, shows that the efforts of the Civil Rights Division attorneys and support staff have been both prodigious and successful. Not only has our day-to-day work never slackened, but we have reached more people with more enforcement having a more lasting positive impact than ever before.

To be sure, we have initiated some policy reforms which have aroused legitimate public debate. I continue to believe that the "course adjustments" in each instance were needed to advance the cause of civil rights farther down the equal opportunity road. Whatever differences of opinion that might have been generated, there should be no misunderstanding that the mission of the Division under my stewardship -- its commitment and mine -- has remained the same as in prior years: to seek a truly just society free of discrimination through the full and fair enforcement of this country's Federal civil rights laws.

Let me briefly highlight just some of the Division's basic activities relevant to this authorization hearing.

1. One of our most active programs is the criminal prosecution of those who intentionally and forcefully interfere with civil rights secured by the Federal Constitution and laws.

Cases prosecuted by our Criminal Section have ranged from assaults, shootings and fatal stabbings of blacks by the Ku Klux Klan to the brutal killing for racial reasons of a young man of Chinese ancestry in Detroit; from the holding of young women against their will in California and Nevada to the killing of a Jewish radio personality by white supremacists. These and hundreds of other tragic incidents involving police or official misconduct, racial violence, involuntary servitude, or the abuse of alien or migrant workers have been tirelessly pursued.

The Division has long been, and is today, deeply committed to eradicating racial violence in this country. The prosecution of incidents of racial violence, particularly those involving organized hate groups such as the Klan, the White Patriot Party, and the Order, remains a primary objective of the Criminal Section.

From January 20, 1981, to January 31, 1987, 55 cases of racial violence involving 137 defendants have been prosecuted (compared to 22 cases involving 52 defendants during the prior Administration); and, of these, approximately one-half involved Ku Klux Klan defendants (24 cases involving 75 Klan defendants, as compared to 9 cases involving 35 Klan defendants during the prior Administration). 1/ In the past 18 months, 28 individuals affiliated with the Klan and other racial hate groups have been prosecuted in North Carolina alone.

During FY 1986 the Criminal Section filed 49 cases under the Federal criminal civil rights statutes, involving 112 defendants, including 70 law enforcement officers. Thirty-four trials were conducted. Overall, the Section achieved an unprecedented success rate of 82.1 percent (convictions and pleas).

1/ Unless indicated otherwise, all figures are current as of January 31, 1987.

We have through rigorous enforcement of the criminal civil rights laws in recent years succeeded in reducing, but not eliminating, that threat. And I am dedicated to "staying that course." Indeed, we have just communicated to the Hill our support for two proposals as part of this Administration's criminal reform package that will give us additional prosecutorial leverage under the existing statutes. 2/ Our work in this area is cut out for us, and we remain dedicated to meeting and defeating the challenge.

2. Our Educational Opportunities Section enforces federal statutes against discrimination in public education, including Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. The Section's enforcement efforts involve elementary and secondary schools as well as public colleges and universities.

Of course, over 30 years after the Supreme Court's landmark decision in Brown v. Board of Education, an overwhelming number of school districts have desegregated either voluntarily or after litigation, and there have thus been far fewer occasions in recent years to file traditional desegregation suits.

Since 1981, the Section has filed 11 complaints involving discrimination in public education at the elementary and secondary school levels and in state colleges and university systems. We also have negotiated approximately 50 consent decrees and other agreements in pending lawsuits.

The remedy employed by the Section has emphasized a number of affirmative desegregation techniques that revolve around the magnet school concept and other educational improvements. Magnet schools have been well received by students, parents, school boards, and community organizations and have proven to be a successful alternative to mandatory busing -- the magnet program is an educational idea whose time has come.

The authorization we seek for FY 1988 will keep this exciting initiative on course.

3. Another of our priority litigation efforts is the

2/ These proposals would amend Section 242 to make an offense resulting in bodily injury punishable by imprisonment of not more than ten years, and to conform Sections 241 and 242 by making identical the protected class under both of these sections.

enforcement of Title VII of the Civil Rights Act of 1964, as amended, and other federal statutes which prohibit employment discrimination on the basis of race, sex, religion, and national origin by state and local governments and, in a few instances, by federal contractors.

Since 1981, the Employment Litigation Section has not only substantially increased the average number of cases filed each year (the overwhelming majority of which (over 97%) challenge discriminatory employment practices against minorities and/or women), but also significantly increased the amount of back pay awards for victims of discrimination. To give just a sample of our activity: We have sought relief from durational residency requirements for municipal employment excluding substantially all black applicants in virtually all-white suburbs in Chicago and Detroit; entered into a consent decree with a municipal employer providing for an unprecedented amount of back pay and priority job offers for American Indians; agreed with a major police department for development of a standard validated entry level examination; entered into a consent decree against four Georgia agencies for some $2,000,000 in back pay to over 1300 blacks and females; litigated a decision in Rhode Island providing over $2,000,000 in back pay to almost 5,000 women harmed by the State's temporary disability program which discriminated against pregnant women; obtained the Division's first ever civil jury verdict against employment discrimination; and broke new ground in seeking relief in our first suit alleging sexual harassment of female employees by a superior.

Our major policy initiative in this area has been to discontinue reliance on race- or gender-based discriminatory quotas (or goals) to remedy incidences of employment discrimination. Since late 1981, we have not sought as a court-ordered remedy, nor negotiated as part of our decrees, preferential employment goals or timetables. With satisfaction, I can report that, with our alternative remedial package -- that includes (i) strict injunctive provisions prohibiting all forms of discrimination, (ii) scrupulous make-whole relief to every identifiable victim, (iii) rigorous affirmative action requiring outreach, training and recruitment programs, and (iv) extensive reporting requirements -- employers under our decrees have achieved remarkable success at integrating their workforces without the stigmatizing and discriminatory effects of employment preferences favoring certain groups and disfavoring others on the basis of race, sex, or national origin. Whatever may have been perceived as the justification for such race or sex preferences in the past, in law and practice they are understandably disfavored today.

4. Turning to the rights of the institutionalized, one of the Civil Rights Division's most critical law enforcement programs is dedicated to protecting the rights of the nation's most vulnerable and forgotten -- the thousands confined to public institutions.

The Civil Rights of Institutionalized Persons Act (CRIPA), passed in May 1980, authorizes the Attorney General to initiate actions on behalf of civilly or criminally institutionalized persons where "egregious or flagrant" conditions exist that deprive those persons of federally protected or constitutional rights. Since enactment of CRIPA the Section has evaluated 434 facilities for purposes of determining the need for a formal investigation, and has initiated 86 investigations in 32 states and 2 territories, involving 95 institutions and the rights of over 100,000 persons. These investigations have spanned from Guam to Massachusetts, from Oregon to the Virgin Islands; they have ranged in size from the world's largest walled prison, the Michigan State Penitentiary with 7,500 inmates, to a small 150-person jail in Boise, Idaho, site of a torture death of a juvenile in 1982; and they have covered mental health, mental retardation and nursing home facilities, and prisons, jails, and juvenile reformatories.

5. Another of the Division's components enforces laws relating to fair housing, consumer credit and public accommodations. After having been merged into another Section by my predecessor, the Housing and Civil Enforcement Section was re-established in November 1983 to restore centralized control of the enforcement of the Fair Housing Act of 1968 and to enforce the

Equal Credit Opportunity Act, and Title II of the Civil Rights Act of 1964, prohibiting discrimination in public accommodations. Since its re-creation, this Section has reviewed over 700 matters, conducted over 500 investigations, filed 73 lawsuits, and negotiated 63 consent decrees.

Housing discrimination cases have been filed against owners and/or managers of apartment buildings, including public housing authorities; owners and/or operators of mobile home parks; an apartment referral service; real estate companies, agents, and brokers; developers and marketers of time-share resort properties; and creditors who discriminated in mortgage loans. These cases involve over 24,000 housing/rental units and over 30,000 time-share units.

In short, the Division has responded to continued discrimination in housing, credit, and public accommodations in a vigorous and forceful manner.

6. Turning to voting civil rights enforcement: Since the Civil Rights Division was established nearly 30 years ago, one of its major assignments has been to enforce acts of Congress prohibiting any discrimination in the right to participate in the electoral process without regard to race or ethnic origin. The Voting Section, now our largest with about 70 employees, enforces the Voting Rights Act of 1965, as amended, and other federal voting statutes assuring that all qualified citizens have an equally available opportunity to register and vote without discrimination on account of race, color, membership in a language minority group, or age. The Section also enforces the Overseas Citizens Voting Rights and Voting Accessibility for the Elderly and Handicapped Acts.

Our voting rights activity has continued to expand to prodigious levels. From January 20, 1981, to February 2, 1987, the Section has participated in a total of 96 cases (44 as plaintiff, 16 as plaintiff-intervenor, 12 as amicus curiae, and 24 as defendant).

The Section 5 Unit, staffed by trained equal opportunity specialists operating under attorney review and supervision, evaluated over 50,000 voting changes during the first term of this

Administration; even more remarkably, from January 1, 1981, through September 30, 1986, the Section has reviewed a staggering total of over 82,000 voting changes. Objections to 593 changes have been entered during this period preventing implementation of discriminatory and potentially discriminatory changes.

While the vast majority of the Section's efforts have involved the rights of black and Hispanic voters, the Section has also filed and successfully prosecuted several actions against county governments in the southwest where the electoral structure did not afford Native Americans an equal opportunity to participate in the electoral process.

Finally, as allowed by the Act, since January of 1981, the Attorney General has authorized a total of 4,406 federal observers to attend and monitor elections held in covered jurisdictions to prevent or document any instances of discrimination in the voting process.

7. Coordination of civil rights enforcement to assure that federally funded programs are operated without discrimination on the basis of race, sex, religion, national origin and handicap is another major Division assignment. The 40-person Coordination and Review Section coordinates, pursuant to Executive Order 12250, the enforcement by 27 Federal agencies of over 50 nondiscrimination laws applying to these federally assisted and federally conducted programs.

Pursuant to Executive Order 12250, the Section has taken the initiative to ensure that all programs and activities conducted by over 90 Federal executive agencies meet the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and do not discriminate on the basis of handicap.

Our FY 1988 authorization anticipates a concentrated effort at the Federal level to crash through the remaining barriers that still confront handicapped individuals daily. It is time -- indeed, well past the time -- that we as a people recognized the struggle against handicap discrimination as every bit as important as the war being waged daily against other forms of discrimination.

8. The final activity I should mention is our effort in appellate court civil rights enforcement. The legal precedents which guide the enforcement of all federal laws relating to civil rights are established by the decisions of higher-level reviewing courts. Our Appellate Section, which consists of 14 lawyers and 12 support staff, processes appeals from cases handled in the district courts by lawyers in the Civil Rights Division, represents the Division in amicus curiae cases in the Supreme Court and courts of appeals, provides legal advice to Federal agencies and other components within the Department on civil rights issues, and prepares comments on selected legislation.

During this Administration, the Division has filed 182 briefs and substantive papers in the Supreme Court and 290 in the courts of appeals, with an overall success rate of almost 81% of decisions that reached the merits and were in full or partial accord with the Division's legal contentions. A breakdown of that success rate over the last six years reveals that the Division has won 81% of the cases in which it was a party in the court of appeals, and 80% of its Supreme Court civil rights cases.

Mr. Chairman, the Report which I have tendered amply demonstrates the strong and unflagging commitment that I and those who work with me in the Division have to preserve and protect the civil rights of all Americans. I suspect that our contribution over the past six years to this country's steady march down the equal opportunity road will not be measured historically in solely statistical terms -- that is on a comparative analysis of the numbers of investigations launched, cases brought, verdicts and judgments obtained, victims awarded relief or the aggregate size of those awards. On all those bases, in all areas of our enforcement responsibility, the marks we will receive will be high.

But, more importantly, my guess is that the historical evaluation of the Division's civil rights efforts in the Reagan years will center -- as it should -- on broader and more pragmatic considerations. On such terms, the last six years have seen some dramatic civil rights advances.

-- We have opened up the enforcement apparatus under our multiple Federal antidiscrimination statutes so that the civil rights protections mandated by these pieces of landmark legislation are now available in equal measure to all Americans, rather than being regarded as the special entitlement of one or two selected groups. Civil rights is no longer a one-dimensional black-white issue in this country; it is an issue impacting on multiple races and individuals from every conceivable ethnic background, and it reaches well beyond concerns of race or nationality, raising concerns that relate as importantly to age, sex, handicap and religion. One legacy this Administration can claim with pride is the shifting of civil rights law enforcement to this multi-dimensional plateau, where it can become a national policy assuring every citizen's Federal rights.

-- In seeking this expansion we have endeavored to steer the philosophy of civil rights on a truly nondiscriminatory course, rejecting the temptation to classify people as representatives of groups rather than individuals with individual concerns and accomplishments. In the latter part of the 1970s we flirted dangerously with a civil rights program driven by race and gender identity which looked to proportional representation in the workforce, the schoolyard, the neighborhood and election results as the easy measure of the progress of individual justice. However well intended, this quick-fix percentage approach is neither required nor recommended in the American system. The preoccupation with quotas, racial goals and set aside programs served in too many instances to polarize many in society along racial and gender lines rather than to break down attitudes and biases based on sex or skin color. Moreover, those who benefitted were forced to wrestle with the suggestion (not always so subtle) that their accomplishments were not earned, but were preferentially granted for reasons unrelated to talent and intrinsic value as individuals. Our rejection of this approach to resolving civil rights problems in this country has not been free of controversy; but with all the turmoil, it has gained widespread support across the land among those individuals -- black and white, male and female, Asian and Hispanic -- who believe in equal, not preferential, opportunity. As the Supreme Court has recently recognized, only the rare case of intentional and intransigent discrimination allows for racial classifications. In the 1980s the proper approach and the one we have urged is to adopt remedies tailored to provide justice for all: Victims of discrimination must be made whole; legitimate efforts must be made to reach out to any who perceive they are unwelcome because of past patterns; and scrupulous adherence to race and sex free selections must be established.

-- Our insistence on an unyielding allegiance to the principle of nondiscrimination has forced us once again in this country to look at individuals as individuals, not as members of some isolated group. A little over a month ago I watched as 20,000 people marched in Forsyth County, Georgia. This was not a collection of disparate and competing groups vying for favor because of the color of their skin, their national background, or their gender. Rather, these were individuals (men and women of all races, colors, religions, nationalities and ages) who came together, spontaneously, to express their outrage at the behavior of the Klan and others who insist on promoting group-oriented prejudices and biases. Their statement was a powerful one, one that not only recognized, but openly and loudly proclaimed, the dignity and worth of the individual, of every man and woman to walk freely and unmolested on our public highways and express himself or herself in ways calculated to raise the public conscience. It is that renewed and invigorated attitude, that re-emerging belief in individual rights, in the promise to all persons in this country of freedom from discrimination, without exception, whether that discrimination operates in forward gear or reverse: that, I would submit, is the hallmark of a maturing civil rights agenda.

-- On more specific terms, we have been instrumental in the development of alternative desegregation programs that no longer ask black students and their parents to shoulder the brunt of the transportation remedies with little promise of educational benefits at the end of the ride. Our alternative to forced busing, based on the magnet school concept, is exciting, innovative and gaining increasing acceptance in public school districts across the country. I am confident that, in time, these years will be remembered as those when the desegregation promise of Brown came of age in a meaningful education sense, not a questionable transportation sense. Our public education system needs a heavy dose of quality education, parental involvement and school discipline. Through the work we are doing with many others in the magnet school field, this Administration is now offering meaningful answers.

-- And there is another legacy from these years that will certainly not go unnoticed. The right to vote has often been referred to as the crown jewel in our constellation of protected rights. With the vigorous law enforcement activity of the Division in this area, it is an undeniable fact that under Section 5 of the Act we have forced states and localities throughout the South, and in some northern states, to redistrict (sometimes several times) or make other voting changes that will guarantee equal minority participation in the electoral process. As a consequence, in the last few years blacks have run for and won political office in impressive numbers. In addition, persistent impediments and barriers to registration and voting have been crushed in jurisdiction after jurisdiction as a consequence of our enforcement of the statute. And that process is continuing in areas outside the South as a consequence of the litigation tool that was provided by Congress in the 1982 amendments to Section 2 of the Voting Rights Act. It is no overstatement to say that as a consequence of this vigorous enforcement activity by the Division, full minority participation in, and effective exercise of, the franchise finally became a permanent electoral reality in many areas of the country during the Reagan years.

-- As a final observation, I would turn to the area of our criminal civil rights law enforcement. I hope it may be said in the future that during this period the country turned the corner on organized racial violence. We have pursued more vigorously than any time before in our history members of the Klan and other hate groups that preach and practice racial hatred and bigotry. While it can be said that in most areas the Klan has been discredited, splintered and neutralized, our efforts to purge this element entirely from society will continue unabated.

In closing, Mr. Chairman, I leave you with the thought that it is essential to continue this legal march to attain equal opportunity for all of our citizens. Whether one views the issue narrowly in terms of cases filed and won or broadly from the historical perspective, the authorization we seek for fiscal 1988 is a necessary step towards a vital national goal that we all share.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

06 MAR 1987

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter with its exhibits responds to your letter of March 3, 1987, requesting certain information from the Civil Rights Division of the Department of Justice.

I am pleased to respond to each of the specific requests as follows:

1. Wm. Bradford Reynolds, Assistant Attorney General for Civil Rights, personally argued the following cases before an appellate court or the Supreme Court:

   Consolidated Rail v. *Darrone*, 465 U.S. 624 (1984)

   Hathorn v. *Lovorn*, 457 U.S. 255 (1982)

   Little Rock v. *Pulaski*, 805 F.2d 815 (8th Cir. 1986)

   Local Number 93 v. *City of Cleveland*, 54 U.S.L.W. 5005 (U.S. July 2, 1986)

   Riddick v. *Norfolk School Board*, 784 F.2d 521 (4th Cir. 1986)

   Shimkus & United States v. *Gersten*, No. 95-2594 (9th Cir.) (pending)

   United States v. *City of Chicago*, 717 F.2d 378 (7th Cir. 1983)

   United States v. *City of Chicago*, 744 F.2d 1300 (7th Cir. 1984)

   Hammon v. *Barry*, Nos. 85-5669, 5670, 5671 (D.C. Cir., Feb. 27, 1987)

   United States & Ruiz v. *Estelle*, 688 F.2d 266 (5th Cir. 1982)

2. A listing of the briefs is provided at Exhibit #2, and copies of the briefs are provided in the folder designated #2.

3. Review of our cases in light of developing law is an ongoing process, and includes all of the Division's cases. To the best of our knowledge, cases which involved affirmative action consent decrees, which were pending at the time of the Supreme Court's 1986 affirmative action decisions, and in which action has subsequently been taken, include:

   Hammon v. *Barry*, Nos. 85-5669, 5670, 5671 (D.C. Cir., Feb. 27, 1987) (Decided in favor of United States.)

Wilks v. *Arrington*, No. 86-7108 (11th Cir.) (Pending)

United States v. *Albrecht* (Chicago Fire Dept.), No. 85-2848 (7th Cir., Aug. 11, 1986) (Appeal dismissed on motion of the United States; motion to modify decree withdrawn in district court.)

United States v. *Indianapolis*, No. IP-78-388-C (S.D. Ind.) (The Division withdrew its motion to modify the decree.)

United States v. *Buffalo*, 779 F.2d 881 (2d Cir. 1985) (A petition for a writ of certiorari was denied on July 7, 1986.)

United States v. *Chicago* [Police Dept.], No. 73C-2088 (N.D. Ill.) (The Division withdrew its motion to modify the decree.)

4. A listing of statements given by Mr. Reynolds is provided at Exhibit #4. Copies are provided in file #4.

5. The information requested is not maintained within the Department in the form requested. The information is being accumulated, and will be provided to the Committee when it is complete.

6. Please see Exhibit #6.

7. Please see Exhibit #7.

8. Please see Exhibit #8.

9. A listing of the briefs is provided at Exhibit #9, and copies of the briefs are provided in the designated folders.

10. Copies of all amicus briefs are provided. These include filings in at least the following attorneys fees cases:

Arriola v. *Harville*, 781 F.2d 506 (5th Cir. 1986)

Leroy v. *Houston*, No. 86-2719 (5th Cir.) (pending)

North Carolina Dept. of Transp. v. *Crest Street*, 55 U.S.L.W. 4001 (U.S. Nov. 4, 1986)

White v. *New Hampshire Dept. of Employment Security*, 455 U.S. 445 (1982) (by invitation at the petition stage)

This information has been compiled in a short time, in an attempt to comply with the timeframe in the request. If it is determined that additional information is required in order to be responsive to the request, we will supplement the foregoing.

We ask that the material supplied pursuant to the request, less the copies of the *amicus curiae* briefs and Mr. Reynolds' statements, be made a part of the official record of Mr. Reynolds' testimony.

If you should want additional information, please let us know.

Sincerely,

For John R. Bolton
Assistant Attorney General

Enclosures

EXHIBIT 2

Affirmative action cases (some of which involve consent decrees) in which the Division has filed briefs in the courts of appeals and Supreme Court since July 1986 include:

Johnson v. Transportation Agency, Santa Clara County, No. 85-1129 (S. Ct.) (amicus brief)

Hammon v. Barry, Nos. 85-5669, 5670, 5671 (D.C. Cir., Feb. 27, 1987) (supplemental brief)

Wise v. Arlington County, No. 85-1887 (4th Cir.) (supplemental brief)

Shimkus v. Gersten, No. 85-2594 (6th Cir.) (brief as appellant)

Britton v. South Bend Community School District, No. 84-2841 (7th Cir.) (amicus brief)

Wilks v. Arrington, No. 86-7108 (11th Cir.) (brief as appellant)

United States v. Paradise, No. 85-999 (Feb. 25, 1987) (petitioner)

Copies of briefs are provided in file #2.

3/4/87

EXHIBIT 4

Statements of Wm. Bradford Reynolds
June 1985 - Present

1.	Subcommittee on Civil and Constitutional Rights Committee on the Judiciary and Subcommittee on Employment Opportunities Committee on Education and Labor, House of Representatives concerning Affirmative Action	7/11/85
2.	Seventh Annual Convention National Association of Police Organizations	8/1/85
3.	Committee on Labor and Human Resources Subcommittee on Labor, U.S. Senate concerning Impact of Garcia v. San Antonio Metropolitan Transit Authority	9/10/85
4.	National Construction Industry Council, Wash., D.C.	9/18/85
5.	The Whig-Cliosophic Society, Princeton University	10/8/85
6.	Subcommittee on Immigration, Refugees and International Law, Committee on the Judiciary, House of Representatives & Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate concerning H.R. 3080, Immigration Control & Legalization Amendments Act of 1985	10/9/85
7.	Ukrainian American Bar Association, Wash., D.C.	10/19/85
8.	Wilmington Rotary Club, Wilmington, Delaware	10/31/85
9.	Hofstra Univ. School of Law, Hempstead, New York	11/8/85
10.	U.S. Commission on Civil Rights, Wash., D.C.	11/13/85
11.	University of Virginia Law and Graduate Republican Club, Charlottesville, VA	11/14/85
12.	Washington Metro Area Corporate Counsel Association Wash., D.C.	11/19/85
13.	Subcommittee on Civil and Constitutional Rights Committee on the Judiciary, House of Representatives concerning Voting Rights Act Regulations	11/20/87
14.	University of Chicago's Chapter of the Federalist Society, Chicago, Illinois	1/10/86
15.	International Bar Association, Zurich, Switzerland	1/31/86
16.	Federal Bar Association, Philadelphia, PA	2/6/86
17.	The Equal Employment Litigation Clinic of The Howard University School of Law, Wash., D.C.	3/5/86
18.	Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives concerning Civil Rights Authorization	4/17/86
19.	MRA Management Association, Inc., Milwaukee, Wisconsin	4/23/86
20.	IAPW - International Association for Personnel Women Arlington, VA	5/8/86
21.	Oxford Union Society, Oxford, United Kingdom	5/11/86
22.	1986 Circuit Judicial Conference, Williamsburg, VA	5/19/86
23.	BNA's Fifth Annual Conference on EEO and Affirmative Action, Wash., D.C.	6/6/86

24.	Federalist Society, New York	6/17/86
25.	Association of Handicapped Student Service Programs in Post-Secondary Education's Ninth Annual Conference San Diego, CA	7/24/86
26.	The Committee on Employment and Labor Relations Law of the Litigation Section and the Equal Employment Opportunity Committee of the Labor and Employment Law Section of the American Bar Association, New York, New York	8/12/86
27.	The Black Family Forum Co-Hosted by the National Center for Neighborhood Enterprise and the Christian Broadcasting Network	8/13/86
28.	The Earl F. Nelson Memorial Lecture, University of Missouri School of Law, Columbia, Missouri	9/12/86
29.	Federalist Society Symposium, American Bar Center/ Northwestern Univ. School of Law, Chicago, IL	11/15/86
30.	Federalist Society, Duke University School of Law Durham, N.C.	12/1/86
31.	Statement in Honor of Dr. Martin Luther King, Jr. Great Hall, Department of Justice	1/16/87
32.	Federalist Society First Annual Lawyers Convention Wash., D.C.	1/31/87
33.	The Equal Opportunity Conference of The Florida Bar Orlando, Florida	2/6/87
34.	The Stanford University Law School, San Francisco, CA	2/17/87
35.	The Lyndon Baines Johnson Library, The University of Texas, Austin, Texas	2/19/87
36.	Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives concerning DOJ Authorization	2/26/87

Copies of statements are provided in file #4.

EXHIBIT #6

Attached hereto is a print-out listing the twenty-four fair housing cases filed by the Department since June, 1985. The print-out indicates the type of defendant and, where appropriate, the number of units involved in the lawsuit. Eight of the suits were against the owners and/or managers of apartment buildings, including four public housing authorities.[1] All of these suits alleged that the defendants discriminatorily refused to rent apartments to blacks or Hispanics or rented them on different terms and conditions. Similar allegations were made in five other suits against the owners and operators of mobile home parks. Real estate companies, agents or brokers were the defendants in three of the cases and these cases involved allegations of racial steering. Three other cases were against developers and marketers of time share resort property which had solicited white customers and discouraged potential minority buyers who expressed an interest in the property.[2] Creditors were defendants in two Fair Housing Act cases alleging discriminatory denial of home mortgage loans to American Indians. (Those suits also included allegations that the practices violated the Equal Credit Opportunity Act.) Three other suits challenged practices which inhibit the full exercise of fair housing rights, rather than the actual denial of such rights. One of these suits was against a neighborhood association which published and recorded racially restrictive covenants in official deed records. Another was against a large newspaper which regularly published discriminatory housing advertisements. And, finally, we sued a municipality to enjoin enforcement of its ordinance which allows fair housing testers to be prosecuted and requires them to register before conducting any test, a requirement that totally eliminates the effectiveness of any testing.[3]

---

[1] In three of the suits against public housing authorities, we alleged that the authorities unlawfully discriminated against minority applicants on waiting lists by renting to later applying white applicants in order to maintain a particular level of integration. One of these cases (United States v. Holyoke) was settled by consent decree providing relief for all identifiable victims of discrimination and requiring all future tenant selections to be made non-discriminatorily. The other two cases are still in litigation. See also, discussion of Shimkus v. Gersten Companies, infra., Exhibit #8.

[2] In one of the cases in which the developer also financed the sales we alleged a violation of the Equal Credit Opportunity Act.

[3] We contacted 15 other cities which had similar ordinances. In response to our letters, these cities repealed their anti-testing ordinances.

ATTACHMENT TO EXHIBIT #6

FAIR HOUSING CASES FILED DURING THE REAGAN ADMINISTRATION

SINCE JUNE, 1985

CASE NAME	DATE FILED	JUDICIAL DISTRICT	STATUTES	TYPE OF DEFENDANT	NUMBER OF UNITS
US v. GURA NEVADA	85/07/02	D NEV	FHA,ECOA	TIME SHARE	2500*
US v. DESMOND	85/07/08	D MASS	FHA	REAL ESTATE CO	
US v. WHEATON SQUARE ASSOC.	85/08/16	ND ILL	FHA	APARTMENT	183
US v. SILVA REALTY	85/10/28	D MASS	FHA	REAL ESTATE CO	
US v. OLD COLONY	85/11/07	D MASS	FHA	REAL ESTATE CO	
US v. HOLYOKE HOUS AUTH	85/11/21	D MASS	FHA,T6	PUBLIC HOUS. AUTH.	1646
US v. F.W. JACKSON & SONS	85/11/26	SD FLA	FHA,T2	MOBILE HOME RENTAL	115
US v. J.P. DICUS	85/12/10	ND ALA	FHA	MOBILE HOME RENTAL	10
US v. SEA DOME RESORT CLUB	86/01/13	ND FLA	FHA,ECOA	TIME SHARE	6600*
JCHA v. HGCA	86/04/25	D NJ	FHA,T6	PUBLIC HOUS. AUTH.	228
US v. ROYDEN OAKS	86/04/28	SD TEX	FHA	NEIGHBORHOOD ASSOC.	
US v. CHARLOTTESVILLE	86/08/08	WD VA	FHA	PUBLIC HOUS. AUTH.	371
US v. MISS PUBLISHERS CORP.	86/08/22	SD MISS	FHA	NEWSPAPER	
US v. SOUTHERN MANAGEMENT CORP. AND SUMMIT HILLS APTS.	86/09/04	D MD	FHA	APARTMENT	1122
US v. HERRICK	86/09/23	MD FLA	FHA	APARTMENT	485
US v. CARMA CORPORATION	86/10/06	WD ILL	FHA	MOBILE HOME SALES	
US v. CITY OF KENOSHA	86/10/16	WD WS	FHA	MUNICIPALITY	
US v. GROVER	86/10/30	D COL	FHA	APARTMENT	16
US v. SECURITY STATE BANK	86/11/06	D ND	FHA,ECOA	CREDITOR	
US v. 1ST BANK OF ROLLA	86/11/06	D ND	FHA,ECOA	CREDITOR	
US v. HOUSING AUTH OF CITY OF WESTWEGO	86/12/04	ED LA	FHA	PUBLIC HOUS. AUTH.	300
US v. MARTIN	87/02/04	MD NC	FHA	MOBILE HOME RENTAL	33
US v. TWINER	87/02/18	ED LA	FHA	MOBILE HOME RENTAL	17
US v. BENEFICIAL	87/03/04	ND GA	FHA	TIME SHARE	5000*

*Because time-share units are sold on a one week basis, the number of units represents the actual number of apartments multiplied by 50 weeks.

EXHIBIT #7

Attached hereto is a list which sets forth pending litigation in fair housing actions (as well as the number of attorneys assigned to each such case) as of March 1, 1987. Six of these cases are in the discovery phase of litigation (Jersey City, Charlottesville, Summit Hills, Carma, Kenosha and Westwego). Three other cases (Parma, Mueller, Yonkers) are active because we are enforcing compliance with outstanding orders or monitoring orderly implementation of the orders. Two have been tried and we are awaiting a decision from the district court (Starrett City and DiMucci). In one (Lac Vieux) the district court has ruled and we are in the process of submitting to the court a final remedial order. In another (Royden Oaks) there has been an agreement reached but entry of the consent decree is awaiting the holding of a fairness hearing. One other case is pending on appeal (Gersten).

Discussion of the resolution of, and relief granted in, these suits is set forth in the response to question 8, and its exhibits.

ATTACHMENT TO EXHIBIT #7

FAIR HOUSING PENDING LITIGATION AS OF MARCH 1, 1987

NAME	JUDICIAL DISTRICT	NO. OF ATTORNEYS
U.S. v. City of Parma	N.D. Ohio	1
U.S. v. Mueller	N.D. Ill.	1
U.S. v. Yonkers	S.D. N.Y.	2
Lac Vieux v. Watersmeet	W.D. Mich.	1
Shimkus v. Gersten Co.	N.D. Cal.	1
U.S. v. Starrett City	E.D. N.Y.	2
U.S. v. DiMucci, et al.	N.D. Ill.	1
Jersey City Housing Auth. v. Marion Gardens Tenant Association	D. N.J.	1
U.S. v. Royden Oaks	S.D. Tex.	1
U.S. v. Charlottesville	W.D. Va.	1
U.S. v. Summit Hills	D. MD.	3
U.S. v. Carma	N.D. Ill.	1
U.S. v. Kenosha	E.D. WS.	1
U.S. v. Westwego Housing Authority	E.D. La.	1

EXHIBIT #8

Attached hereto is a list, which sets forth the twenty-four fair housing suits which have been resolved by consent decree since June, 1985. Once a lawsuit is authorized, it is our general policy to offer the prospective defendant(s) an opportunity to negotiate a consent decree to be filed simultaneously with the complaint. This procedure effectively conserves our time and resources that would otherwise be consumed preparing preliminary pleadings and discovery papers. Thirteen of the twenty-four consent decrees entered since June, 1985 were resolved in this manner by the simultaneous filing of a complaint and consent decree. The remaining eleven consent decrees were entered after the filing of the complaint but prior to trial: three resolving cases filed since June, 1985 and eight resolving cases filed prior to June, 1985.

In any event, most cases settle short of trial. Because we always have substantial evidence of unlawful activity before we recommend a suit, the strength of our case becomes apparent once discovery begins. Furthermore, because we cannot obtain damages for victims in our cases, there is little incentive for a defendant not to settle. Proceeding to trial will usually only mean large legal bills and negative public exposure for defendants.

Whether cases are settled by consent decree or litigated, we generally seek relief covering the same basic areas in most cases:

> (1) An injunction against future discrimination. Although such an injunction requires no more than what the law already requires, a post-decree violation of the injunction raises the possibility that the defendant will be found in contempt of court, the penalties for which may be more serious than the penalty for violation of the Fair Housing Act alone.
>
> (2) An education program designed to ensure that defendants and their employees are fully aware of their obligations under the law and the consent order. For large apartment management firms or mortgage lenders this may involve extensive retraining, but for most defendants, it means making certain that each person knows what the Act and court order require.
>
> (3) Notice to the public that the defendant follows a policy of nondiscrimination. This affirmative step is often necessary to overcome a biased image the defendant may have in the community. Notice can be accomplished through ads in newspapers which circulate in the minority community or through letters to fair housing groups when apartment vacancies occur. In Fair Housing Act cases, we always ask that defendants be required to post HUD-approved equal housing opportunity signs in their rental or sales offices and that the fair housing slogan "Equal Housing Opportunity" and/or the HUD-approved fair housing logo appear in ads for vacancies.
>
> (4) Recordkeeping and reporting. Defendants are required to prepare and maintain records (which we have access to) of their rental, sales or lending activity in order that we can determine whether defendants are complying with the law and the consent decree. In addition, defendants are required to submit periodic reports to us over a limited period (usually three years) which permits us to monitor defendants' activities and minimizes the need for us to make site visits to review defendants' records unless possible problems are noted in the reports.

> (5) Relief for individual victims. Although the courts have ruled that we cannot recover monetary damages for the victims of unlawful discrimination, we are entitled to "equitable relief" on their behalf. Thus, for example, where we can identify the individuals who were denied housing because of defendant's discriminatory conduct, we require that such persons be offered the next available units or be given some other priority in order of application date.

Virtually all the consent decrees listed in Attachment C contain relief of this nature. Two of the cases listed warrant special discussion. In United States v. Town of Cicero, filed in 1983, the complaint was unusual because it combined allegations of housing and employment discrimination by this virtually all-white Chicago suburb. We argued that the Town's requirement that candidates for municipal employment must have lived in the Town for at least a year before being eligible operated as an arbitrary and discriminatory barrier to the employment of blacks. We asserted that Town officials violated the Fair Housing Act by interfering with individual black families' attempts to reside in Cicero (including the purchase of a house by the Town to prevent a black family from occupying it), by acting to discourage blacks as a group from residing in Cicero and by failing to protect blacks from harassment and interference with their right to reside in, work in, and even be in, the Town of Cicero. After extensive discovery and a favorable ruling from the 7th Circuit on a preliminary injunction regarding the employment issues, the case finally settled in 1986. The consent decree calls for the Town to adopt a fair housing program to attract black residents and to recruit blacks for Town government jobs. The Town also must adopt a fair housing resolution to demonstrate its commitment to fair and open housing, establish a municipal office to receive housing discrimination complaints, and advertise that all persons are welcome in Cicero. To open municipal employment to blacks, the Town has eliminated all requirements that condition employment eligibility on being a resident in the community for a period of time.

The consent decree in United States v. Holyoke Housing Authority provided for the identification of minorities who would have received housing but for the discriminatory housing practices of the Housing Authority. Those individuals were then to be offfered public housing vacancies on a priority basis as they arose. In addition, the Housing Authority was required to offer those individuals who were interested, alternative housing opportunities in the form of Section 8 certificates and the Housing Authority was required to assist the certificate-holders in locating and obtaining Section 8 eligible housing. In order to facilitate this remedial scheme, HUD agreed to allocate additional Section 8 certificates to the Holyoke Housing Authority for use pursuant to the consent decree.

Since June, 1985, some of our major pending cases have been resolved or partially resolved by litigation. One of our major litigation activities in this period has been the proceedings in United States v. Yonkers Board of Education, a case filed in the last week of the Carter Administration. This was the first case to combine education and housing claims. We argued that (1) the School Board had taken various intentional actions to create and maintain a segregated school system in Yonkers; (2) that the City of Yonkers had taken discriminatory action to confine housing for minorities to the Southwest quadrant of the City, at least in part, in order to maintain predominantly or all-white schools in other parts of the City; and (3) that the City's discriminatory action with respect to housing, and its other actions more directly related to the education system, made the City jointly liable with the School Board for the segregation in the schools.

On November 20, 1985 the District Court issued a liability opinion sustaining our claims. Remedial orders were issued in the spring of 1986. The court ordered into effect a desegregation plan for the school system which the city was to fund. To remedy its discrimination in housing, the City was ordered to create a Fair Housing Office, to submit to HUD sites outside the southwest quadrant for 200 units of public housing, and to submit a comprehensive plan for the facilitation of new low and moderate income housing. Each of these orders has been appealed. The City's motions to stay major parts of the housing remedy order were denied by the District Court, the Court of Appeals and the Supreme Court. Nevertheless, the City has failed to comply with portions of the Order and enforcement proceedings (including a motion for contempt) have been necessary to assure appropriate implementation of the Court's order. The City and the School Board's appeals are pending before the Court of Appeals.

Another case involving significant litigation activity has been Shimkus v. Gersten Companies (N.D. Cal.). We intervened in this case because a settlement required the owners and operators of several large apartment complexes to rent to a specific quota of black applicants. We had previously sued the same defendants and had negotiated a consent decree which required them to offer all apartments on a nondiscriminatory basis, advertise vacancies in such a way as to reach all racial and ethnic groups and train and instruct employees to conduct all rental operations in a nondiscriminatory manner. Indeed, progress had been made in increasing minority tenancy by the time of entry of the private consent decree. The private settlement required the defendants to violate our consent decree's prohibition on discrimination by allowing non-blacks (including other minorities) to be turned away solely on the basis of their race. The district court entered the private consent order on July 8, 1985 and the case is now pending before the court of appeals.

Decisions in three other cases have resolved the issues raised in those cases. On April 28, 1986 in United States v. Rodeheaver, the court granted our motion for summary judgment in a case brought under the Fair Housing Act against a Recorder of Deeds. In a similar case against a neighborhood association (United States v. University Oaks Civic Club) the district court ruled on February 20, 1987 that the association had not violated the Fair Housing Act by renewing restrictive covenants which included a provision forbidding occupancy by non-Caucasians.[1] And, in Lac Vieux Desert Band of Lake Superior Chippewa Indians and United States v. Watersmeet Township (W.D. Mich.), we intervened in a case challenging a township's refusal to provide municipal services to an Indian housing project located within the township's borders on tax exempt land held in trust by the United States on behalf of members of the Indian tribe. On February 6, 1987 the district court entered an order requiring injunctive relief, pursuant to a finding that the township's refusal of services was based on the special status of the Indian trust property and that this action violated federal constitutional and statutory law.

In one other piece of litigation instituted since June, 1985 to enforce a consent decree entered in United States v. Oak Terrace Apartments in 1984, we were successful in a motion to hold the owner in contempt after we learned that a black applicant was denied rental of an apartment on racial grounds. On January 7, 1987 this decision was upheld by the Court of Appeals for the Seventh Circuit.

---

[1] Prior to trial the association had prepared a declaration and affidavits disclaiming the validity of the restrictive covenants and explaining that they were void and unenforceable. The litigation concerned whether this action was adequate to offset the previous discriminatory action by the association in renewing the covenants.

ATTACHMENT TO EXHIBIT #8

FAIR HOUSING CONSENT DECREES FILED DURING THE REAGAN ADMINISTRATION
SINCE JUNE, 1985

CASE NAME	DATE FILED	JUDICIAL DISTRICT	DECREE 1	DECREE 2	STATUTES
US v. TOWN OF CICERO, ET AL	83/01/21	ND ILL	86/05/15		FHA,T7
US v. NORTH DELAWARE REALTY CO, ET AL	84/06/11	D DEL	85/06/13		FHA
US v. INTERNATIONAL DIRECT MAIL MARKETING, INC, ET AL	84/08/28	SD TEX	86/01/02		FHA
US v. DAVID FRIEDMAN, ET AL	84/10/23	D NJ	85/07/22		FHA
US v. HOLLINGER, ET AL	84/11/14	SD ALA	85/06/27		FHA
US v. WILSON-COVINGTON	85/03/13	MD NC	86/05/16		FHA
US v. TREASURE ISLE	85/03/06	MD FLA	85/09/18		FHA
US v. ALTA APTS	85/04/15	D UTAH	85/07/09		FHA
US v. GURA NEVADA	85/07/02	D NEV	85/07/02		FHA,ECOA
US v. WHEATON SQUARE ASSOC.	85/08/16	ND ILL	85/08/16		FHA
US v. SILVA REALTY	85/10/28	D MASS	85/10/28		FHA
US v. OLD COLONY	85/11/07	D MASS	86/07/18		FHA
US v. HOLYOKE HOUS AUTH	85/11/21	D MASS	85/11/21		FHA,T6
US v. F.W. JACKSON & SONS	85/11/26	SD FLA	85/11/26		FHA,T2
US v. J.P. DICUS	85/12/10	ND ALA	85/12/10		FHA
US v. SEA DOME RESORT CLUB	86/01/13	ND FLA	86/04/14	86/08/11	FHA,ECOA
US v. MISS PUBLISHERS CORP.	86/08/22	SD MISS	86/08/22		FHA
US v. HERRICK	86/09/23	MD FLA	86/09/23		FHA
US v. GROVER	86/10/30	D COL	86/10/30		FHA
US v. 1ST BANK OF ROLLA	86/11/06	D ND	87/01/21		FHA,ECOA
US v. MARTIN	87/02/04	MD NC	87/02/04		FHA
US v. TWINER	87/02/18	ED LA	87/02/18		FHA
US v. SECURITY STATE BANK	86/11/06	D ND	87/03/02		FHA,ECOA
US v. BENEFICIAL	87/03/04	ND GA	87/03/04		FHA

Sumitomo v. Avigliano	NY	1982	Employment
Texas Univ. v. Camenisch	TX	1981	Education
Thornburg v. Gingles	NC	1985	Voting
Thornton v. Caldor	CT	1984	Employment
Upham v. Seamon	TX	1982	Voting
Wambheim v. JC Penney	CA	1984	Employment
Washington Co. v. Gunther	OR	1981	Employment
White v. Dougherty Co.	GA	1985	Voting
White v. NH Emp. Sec'y	NH	1981	Attorneys Fees
Wygant v. Jackson Bd. of Educ.	MI	1985	Employment
Zipes v. TWA	US	1981	Employment

Copies of Supreme Court briefs are provided in files #9-1 and #9-2.

EXHIBIT 9

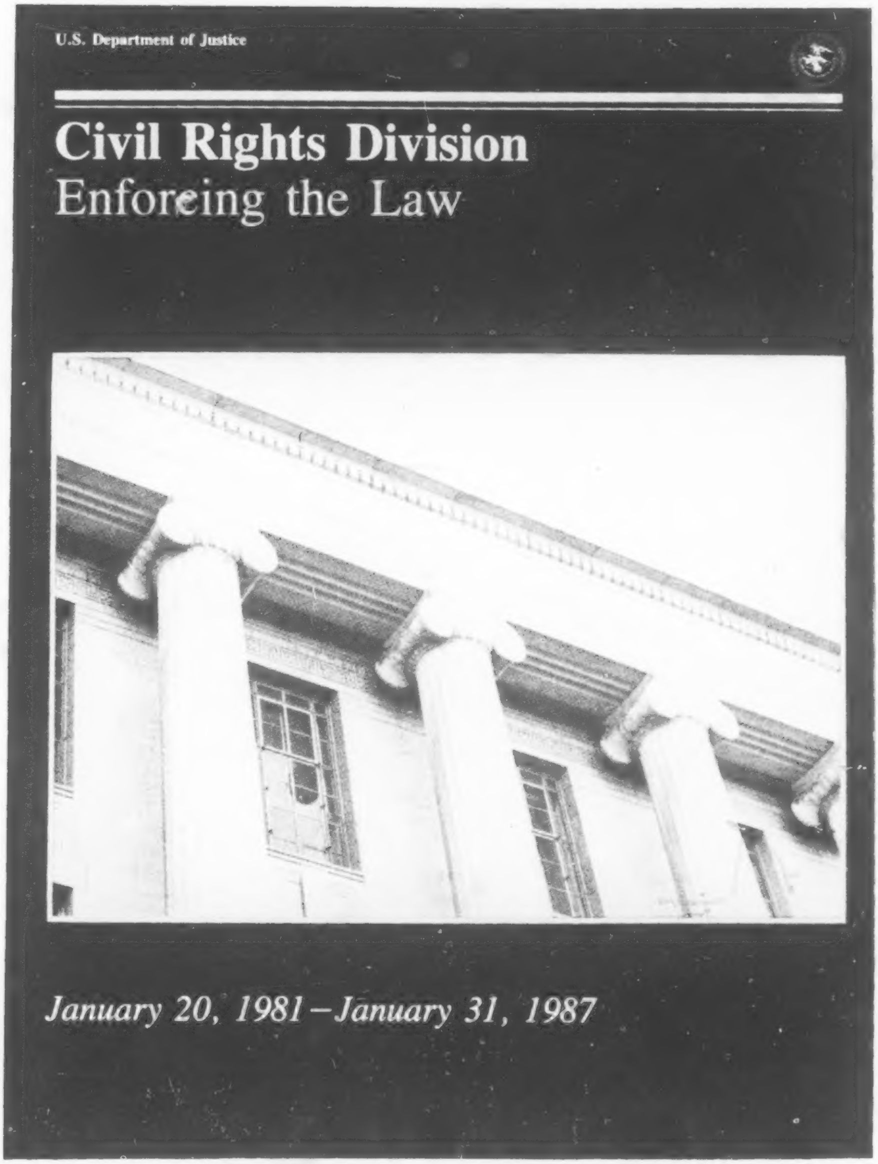
2. COURTS OF APPEALS AMICUS CURIAE PARTICIPATION

January 20, 1981 - February 28, 1987

Case Name	Court	State	Date	Subject Matter
Amer. Nurses v. Ill.	7th	IL	1985	Employment
Arriola v. Harville	5th	TX	1983	Voting
Bratton v. Detroit	6th	MI	1983	Employment
*Britton v. South Bend	7th	IN	1985	Employment
Brooks v. Federal Bank	11th	AL	1982	Employment
Corley v. Jackson PD	5th	MS	1985	Employment
Debra P. v. Turlington	5th	TX	1981	Education
Deveraux v. Geary	1st	MA	1985	Employment
Dowell v. Oklahoma	10th	OK	1985	Education
Edge v. Sumter County	11th	GA	1984	Voting
Florida AGC v. Dade Co.	11th	FL	1984	EPC
French v. Owens	7th	IN	1985	Institutions
GARC v. McDaniel	11th	GA	1983	Institutions
Hoptowit v. Ray	9th	WA	1981	Institutions
Hughley v. Adams	5th	GA	1981	Voting
Jordan v. Greenwood	5th	MS	1982	Voting
KARC v. Conn	6th	KY	1981	Institutions
Kirksey v. Jackson	5th	MS	1981	Voting
Larry P. v. Riles	9th	CA	1981	Education
Leroy v. Houston	5th	TX	1986	Voting
Little Rock v. Pulaski	8th	AK	1985	Education
Nelson v. Thornburgh	3rd	PA	1983	Employment
Newman v. Alabama	11th	AL	1983	Institutions
NYSARC v. Carey	2nd	NY	1982	Institutions
Pendleton v. Heard	5th	MS	1986	Voting
POA v. San Francisco	9th	CA	1986	Employment
Porter v. Dade County	5th	FL	1981	Federal Programs
Reed v. Rhodes	6th	OH	1981	Education
Riddick v. Norfolk	4th	VA	1984	Education
Shortbull v. L. Elk	8th	SD	1981	Indians
Underwood v. Hunter	11th	AL	1983	Voting
Hooks v. Wainwright	11th	FL	1985	Institutions
Wickes v. Olympic Air	6th	MI	1984	Employment
*Wise v. Arlington Co.	4th	VA	1985	Employment

* See file #2

Copies of courts of appeals briefs are provided in files #9-3, #9-4, and #9-5.



U.S. Department of Justice

Civil Rights Division
Enforcing the Law

January 20, 1981–January 31, 1987

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U.S. Department of Justice

Civil Rights Division
Enforcing the Law

January 20, 1981 -
January 31, 1987

Foreword

This document describes the enforcement activities and accomplishments of the Civil Rights Division of the U.S. Department of Justice over the past six years. It is not intended to serve as a comprehensive listing of cases and activities, but rather as a general resource document describing the enforcement responsibilities and programs of the Division, with particular emphasis on the roles our enforcement sections have played and the impact they have had in protecting the civil rights and liberties of each and every American citizen. Their impact has been substantial in every area of civil rights enforcement -- education, employment, housing, consumer credit, public accommodations, public institutions, voting, and criminal civil rights enforcement.

It is with great pride that I have served as Assistant Attorney General of the Civil Rights Division during this period, and it is with an equal measure of pride that I present the accomplishments of the 400 dedicated men and women of this Division.

WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division
January 31, 1987

Civil Rights Division - Enforcing the Law

January 31, 1987

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Introduction

The Civil Rights Division of the Department of Justice was established in 1957, following enactment of the first civil rights statute since Reconstruction, as the primary institution within the federal government responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. Over the past 30 years, the Division has grown dramatically both in size and responsibility.

With the enactment of the 1957, 1960 and 1964 Civil Rights Acts, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, the Equal Educational Opportunities Act of 1974, the Civil Rights of Institutionalized Persons Act of 1980, and various other civil rights statutes, the scope of the Division's enforcement activities has significantly expanded. Today the Division safeguards the constitutional and federal statutory rights of all Americans to be free from discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs. Additionally, the Division is charged with prosecuting criminal civil rights violations.

Under the Administration of President Reagan, the single and resounding theme that has characterized the law enforcement activities of the Civil Rights Division has been the legal, constitutional and moral imperative of equal treatment for all individuals without regard to skin color, gender, ethnicity or religious beliefs. Guided by this principle, the Division has aggressively enforced civil rights laws throughout the United States (see Appendix I-A, Civil Rights Division — District Court Cases Filed by State, January 20, 1981 through January 31, 1987).

A significant portion of the Division's resources is devoted to investigating civil rights violations. These investigations have touched every state in our Nation, have involved the rights of virtually every racial, ethnic, gender, and religious group, and have encompassed all substantive areas of our enforcement authority (see Appendix I-B, Civil Rights Division — District Court Cases Filed by Subject, January 20, 1981 through January 31, 1987). Many of these investigations result in voluntary compliance by the offending parties. In other instances, however, it is necessary for us to file suit, not only to end all discriminatory practices by the defendants and to obtain full redress for the victims of discrimination, but also to send a strong and unambiguous message to other offenders or would-be offenders that discrimination against any individual will not be tolerated by this Civil Rights Division.

Our lawsuits have involved a broad range of civil rights violations, defendants, and victims. For example, over the past six years, we have brought suit

- against numerous substantially all-white suburbs of two major northern cities that maintained durational residency requirements for municipal employment that operated to exclude virtually every black applicant;
- against a state employer that discriminated against pregnant female employees in its temporary disability program;
- against developers and marketers of time-share resort properties from Florida to California that discriminated against minorities;
- against lenders that refused to grant credit to American Indians where the collateral for the loan would be located on an Indian reservation;
- against mental retardation facilities that overused physical restraints and misused powerful tranquilizing drugs;
- against a state maritime academy that had intentionally discriminated against women in recruitment and admissions;
- against a city that denied blacks an equal opportunity to participate in municipal elections through an at-large election system rather than elections by district.

These are but a few examples of litigation pursued by the Division since 1981. In the area of criminal prosecutions of civil rights violations, the Division has established an unprecedented success record and has played a major role in the elimination or significant reduction of many racial hate groups throughout the country.

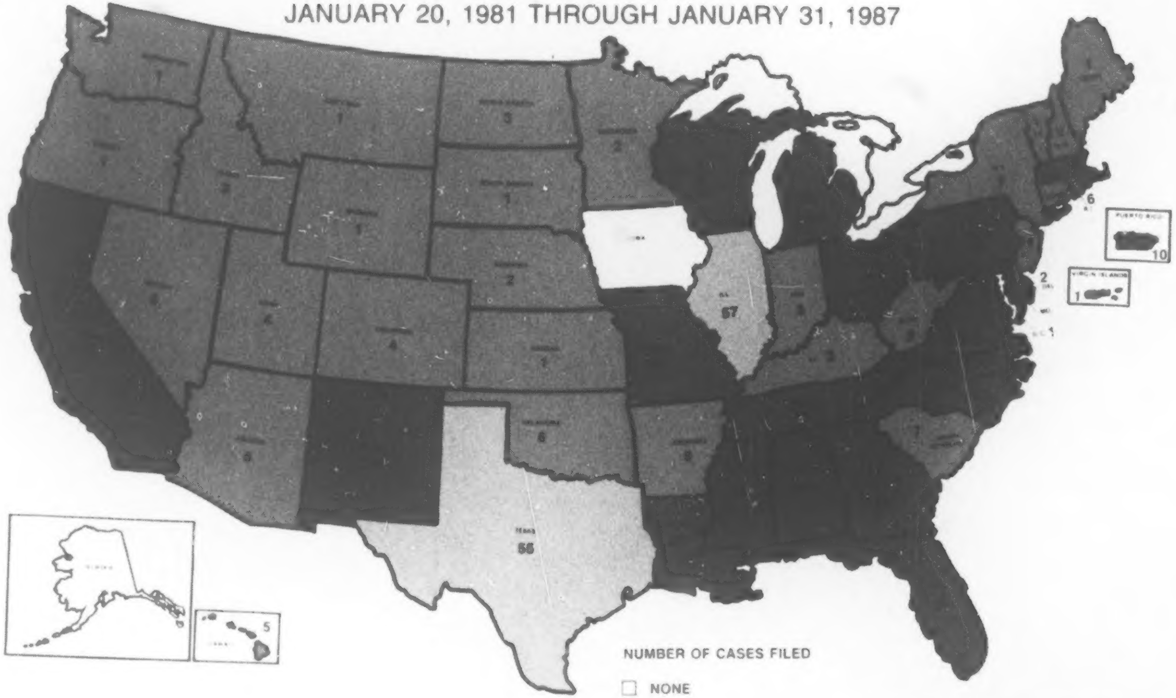
Significantly, we have closely scrutinized remedies imposed over the last two-and-a-half decades of civil rights enforcement to measure their effectiveness. In every case, we have sought as a remedy measures that will end all discrimination and that will provide full and lasting relief to those who have suffered injury at the hands of the wrongdoer. And, where we have been able to develop more effective and lasting remedial alternatives, we have vigorously urged these upon the courts and parties. Thus, for example, this Division has been instrumental in the development of magnet schools and programs throughout the country as an effective desegregation alternative to forced busing, and one that has as an essential focus providing quality education for all public school children. We have also experienced surprising success with affirmative action remedies in the employment area by emphasizing outreach, training and active recruitment as the best means to achieve equal employment opportunities.

While substantial progress has been made over the past 30 years in the civil rights arena, discrimination still exists. In many instances, it is far more subtle than the blatant discrimination of the 1950s and 1960s; nevertheless, prejudice and bias, wherever it exists and to whatever degree, are a cancer within our society that must be eliminated. The Civil Rights Division's dedication to that end is well documented. Its commitment today remains no less than 30 years ago to protect the rights of all citizens through the aggressive enforcement of the laws passed by Congress for that purpose.

CIVIL RIGHTS DIVISION

DISTRICT COURT CASES FILED BY STATE AND TERRITORY

JANUARY 20, 1981 THROUGH JANUARY 31, 1987



NUMBER OF CASES FILED

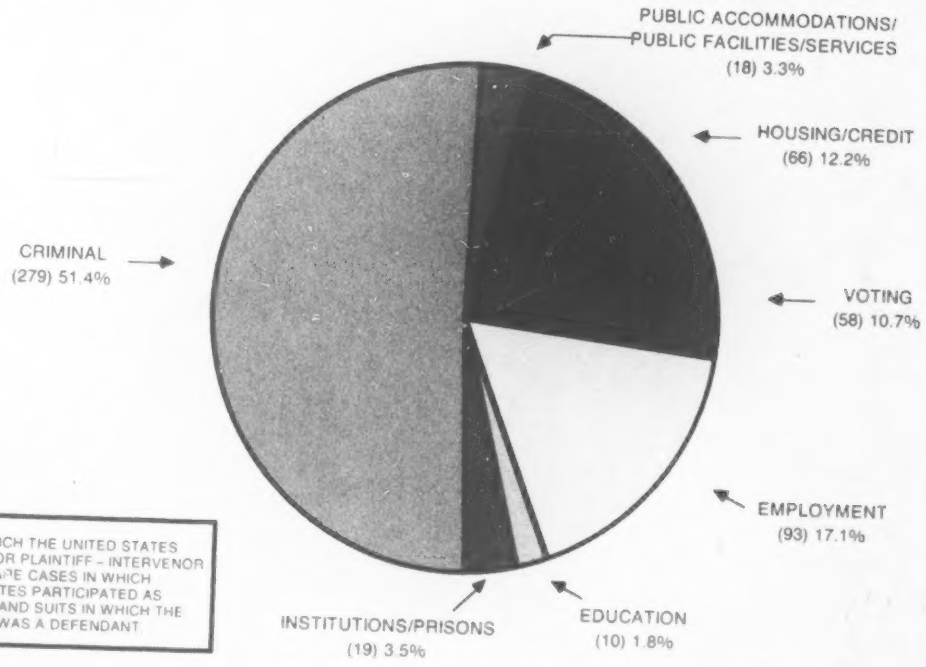
- ☐ NONE
- ▨ LESS THAN 10
- ■ 10 – 25
- ■ 26 – 40
- ☐ GREATER THAN 40

543 SUITS IN WHICH THE UNITED STATES WAS PLAINTIFF OR PLAINTIFF-INTERVENOR. NOT INCLUDED ARE CASES IN WHICH THE UNITED STATES PARTICIPATED AS *AMICUS CURIAE* AND SUITS IN WHICH THE UNITED STATES WAS A DEFENDANT.

CIVIL RIGHTS DIVISION

DISTRICT COURT CASES FILED BY SUBJECT

JANUARY 20, 1981 THROUGH JANUARY 31, 1987



543 SUITS IN WHICH THE UNITED STATES
WAS PLAINTIFF OR PLAINTIFF – INTERVENOR
NOT INCLUDED ARE CASES IN WHICH
THE UNITED STATES PARTICIPATED AS
AMICUS CURIAE AND SUITS IN WHICH THE
UNITED STATES WAS A DEFENDANT

(I–B)

Criminal Civil Rights Violations

The Division is charged with enforcing federal criminal statutes designed to preserve personal liberties. This prosecution effort focuses on three primary areas: (1) two laws passed during Reconstruction prohibit persons from acting under color of law, or in conspiracy with others, to interfere with an individual's federally protected rights; (2) other statutes prohibit the holding of individuals in peonage or involuntary servitude; and (3) provisions of the 1968 Civil Rights Act prohibit the racially motivated use of force or threats of force to injure or intimidate persons involved in the exercise of certain rights and activities.

In a society as large, diverse, and complex as ours, it comes as no surprise to hear of abuses of individual rights. What makes this country unique is the existence of a national policy to combat such abuses through active enforcement of federal criminal sanctions. The cases investigated and prosecuted throughout the United States by Civil Rights Division attorneys and Assistant United States Attorneys are a reflection of that federal policy.

Violations of Individual Liberty

Since 1981, one or more criminal civil rights cases have been filed in 37 of the 50 states, and in Puerto Rico (see Appendix II-A, Criminal Civil Rights Prosecutions by State and Territory, January 20, 1981 through January 31, 1987). These prosecutions have addressed an extraordinary array of criminal conduct. The following incidents are but a few examples.

On a hot summer night, the driver of a vehicle involved in a minor traffic accident was arrested by a New Jersey state police trooper. The driver was handcuffed and placed in the back of a police car. When the arrested man kicked out one of the car windows, the trooper entered the car and repeatedly struck the shackled man in the head and neck with a heavy metal flashlight, fracturing his skull and causing brain injuries that resulted in his death.

Officials and officers of the Piedmont Correctional Center in Salisbury, North Carolina, planned to "teach a lesson" to two prisoners who had angered prison officials. The two inmates were removed from their cells separately, and each was severely beaten while in full restraints — handcuffs, that were attached to a waist chain, and leg irons. The officers used their fists, a leather slapjack, and a thirty-six inch riot baton. Both inmates suffered grave injuries, including a fractured skull and a concussion.

Crosses were burned in front of, and shots fired into, numerous residences in Alexander and Iredell Counties, North Carolina, when persons who lived in the homes "dared" to associate with individuals of another race. Many of the shootings were aimed at occupied dwellings and, in one, a five-year-old boy narrowly escaped injury. Following the incidents, many people moved from their homes, while others were driven to extraordinary measures — including sitting up at night armed with shotguns — to safeguard their homes and families.

A small religious cult calling itself the "House of Judah" established a primitive residential camp in rural Michigan. Cult leaders instituted a reign of terror at the camp, relying on brutal beatings and torture to control cult followers. After a twelve-year-old boy ran away from a camp work detail, cult leaders whipped him so severely that he died of his injuries, without ever receiving medical treatment.

Each of the events described is an example of conduct punishable under the federal criminal civil rights statutes. The Division is responsible for the enforcement of these federal laws and for the recent, successful prosecutions of those involved in the above-cited conduct.

The Federal Response

Thousands of criminal civil rights complaints are received by the Department of Justice annually. Initially, they may be in the form of telephone calls, letters, or in-person statements to the FBI. Each complaint that appears to have any substance whatsoever is investigated by the FBI, and a report of the incident is made. These reports are reviewed carefully by both Civil Rights Division prosecutors and Assistant United States Attorneys throughout the country. Matters which are determined to be undeserving of further prosecutorial attention are closed and the Civil Rights Division attorney to whom the matter has been assigned prepares a statement of reasons for closing.

If a closed investigative report involves claims of official misconduct, the Civil Rights Division sends letters to the interested parties (including the complainant and/or alleged victims and subjects of the complaint) notifying them of the Department's closing action. This notification system is, to our knowledge, unique in law enforcement and, while it is no small task (since 1984 some 20,000 notification letters have been sent), we believe these letters provide assurance to both the victims and subjects of the investigation that the allegations are carefully considered and not lost in some great bureaucratic quagmire in Washington. All other incidents reported by the FBI are pursued to grand jury investigation and, where the evidence developed is sufficient, to trial, unless a plea is entered.

The civil rights prosecution effort has been most impressive. At one level, it can be measured by the Division's success rate, which in FY 1986 reached an all-time high of eighty-two percent (82%) (see Appendix II-B, Criminal Section Investigations and Prosecutions, October 1, 1977 through January 31, 1987). At another and more important level, it can be measured by the messages conveyed by a vigorous, thorough and unrelenting criminal civil rights enforcement commitment by the federal government, *i.e.*, the message to violators and potential violators of our abiding intolerance of such behavior and, conversely, the message to every other citizen that their individual rights are being safeguarded in the most vigilant and uncompromising manner.

Our prosecutors frequently handle cases of national significance which either cannot be, or are not, sufficiently addressed by state or local authorities. These are invariably matters of intense public interest. Thus, we have prosecuted outlandish conduct ranging from the brutal killing of a black musician in Kansas City, Missouri, and a young man of Chinese ancestry in Detroit, to the holding of young girls against their will in California and Nevada, the cover-up by police officers in Puerto Rico of the murder of two pro-independence youths in police custody, and the killing of a Jewish radio personality by white supremacists in Denver. These and hundreds of other crimes involving police or official misconduct, racial and religious violence, or the abuse of alien or migrant workers have been vigorously pursued.

Racial Violence

In 1986 the Division continued its priority emphasis on the prosecution of incidents of racial violence (see Appendix II-B, Prosecutions Involving Racial Violence, October 1, 1977 through January 31, 1987). There have been some notable successes on this front in the past several years. This past year, a three-year grand jury investigation of crossburnings and shootings in North Carolina, previously mentioned, ultimately resulted in nineteen convictions, including those of three statewide leaders of the White Knights of the Ku Klux Klan. Sentences obtained included prison terms of up to seven years and a total of $17,000 in fines.

In Philadelphia, four defendants, including a juvenile, were convicted of destroying by fire the home of a black couple who had moved into a white neighborhood. The fire was set to prevent the black couple from returning to their home and to intimidate other black families from moving into the neighborhood. The defendants received prison terms and were ordered to pay restitution to the family.

In another case in North Carolina, a white state prison guard, a member of the Carolina Knights of the Ku Klux Klan, pled guilty to interfering with the employment rights of a black correctional officer who had filed a grievance for his unsuccessful attempt to obtain a promotion at the correctional facility. The defendant had sought to intimidate the victim by burning a cross near his home.

In Seattle, Washington, in December of 1985, the Department of Justice successfully prosecuted 23 current and former members of the Aryan Nation hate group for violations of the RICO statute. The Civil Rights Division is actively investigating allegations that members of the same and other related organizations have violated federal criminal civil rights statutes in connection with the killing of Denver talk show host, Alan Berg, and other incidents.

In addition, throughout the past year and into the present we are continuing our substantial efforts to investigate and prosecute acts of racial violence committed by organized hate groups such as the White Patriot Party and an Aryan Nation splinter group known as The Order. Indeed, the Division has just concluded a grand jury investigation where five members of the former White Patriot Party in North Carolina were indicted for federal firearms violations.

Law Enforcement Misconduct

Investigations into complaints alleging misconduct by law enforcement officials are also a major part of the Division's criminal law enforcement activity. After a four-month trial, a New Jersey state police trooper, described above, was convicted of unlawfully beating his shackled prisoner to death. He also was convicted, with a second state trooper, of conspiring to obstruct justice by covering up evidence of the fatal beating and of committing perjury before the grand jury. Previous attempts by local authorities to prosecute this incident had been unsuccessful.

As a result of a continuing federal effort to curtail police misconduct in Puerto Rico, five police officers were convicted and two others pled guilty in 1986. In one case, four officers arrested several unarmed youths suspected of possessing marijuana. When one of the suspects fled, a police officer shot him in the head, killing him. The federal civil rights investigation subsequently revealed that three other officers assisted the shooting officer in covering up the incident, and that as a consequence, the local prosecution of the killing had resulted in that officer's acquittal. Ultimately, a federal grand jury indicted all four officers; two pled guilty and two were convicted by a jury. The police officer who actually shot the youth was sentenced to 20 years in prison.

In another case, three young men detained by three Puerto Rico narcotics detectives were repeatedly beaten and were forced by the detectives to beat one another with a wooden club, causing injuries that resulted in the death of one of the victims. Although the defendants were tried and convicted locally before a judge, they were sentenced to probation. A subsequent federal prosecution resulted in the conviction of all three defendants on all counts, with two defendants receiving prison terms of 99 years and 30 years respectively.

In the North Carolina incident mentioned earlier, where two shackled inmates were brutally and severely beaten, those indicted for the beatings and related charges — the superintendent of the state correctional institution and five other correctional officers — were all convicted. Prior to trial four of the defendants pled guilty. They then testified for the government during the successful trial of the superintendent for conspiracy to violate the rights of the prisoners. The remaining defendant, the assistant superintendent of the prison, was convicted of perjury at a separate trial.

Involuntary Servitude

The Division also has responsibility for cases involving violations of the peonage and involuntary servitude statutes designed principally to deter the victimization of migrant workers and others held in bondage. One recent prosecution under these statutes, involving the smuggling of Indonesian laborers into the United States to perform domestic work, resulted in two convictions after a month-long trial. A guilty plea was subsequently obtained from a third defendant who had been a fugitive. In another such case, a wealthy homeowner who recruited young, illegal alien females to perform domestic work in homes in California, Nevada, and Hawaii, and who coerced the victims to work without pay and against their will, was convicted of numerous felonies. The defendant's spouse pled guilty to misprision of a felony prior to trial.

And, in yet another involuntary servitude prosecution (noted above), eight members of the religious cult, the "House of Judah," were convicted in the Western District of Michigan for conspiring to hold children in involuntary servitude and for the actual enslavement of one child. The children of members of the cult were physically punished by members other than their parents if their work duties were not performed "satisfactorily." One child was so severely beaten with an axe handle by several cult members that he later died from the injuries he sustained. Eleven other children were medically examined and found to have been physically abused, one child with facial burns from an iron. Although the mother of the victim who died had been convicted of manslaughter by the state for her participation in the beating death of her son, the state prosecution of several other cult members, including the leader known as "the Prophet," had been unsuccessful, thus warranting the federal prosecution effort.

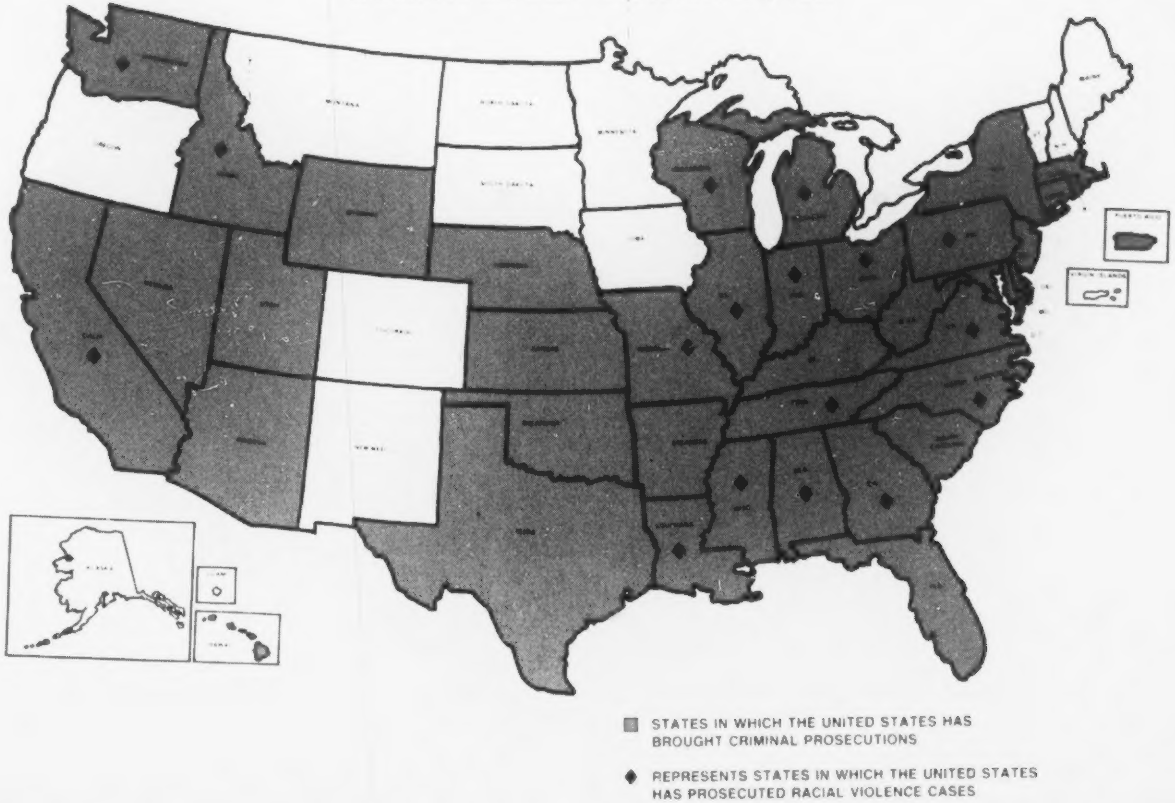
Conclusion

The prosecution of criminal civil rights cases at either the state or federal level is not easy. Frequently, the defendants are aligned with law enforcement agencies that choose to provide them with blind and unwavering support. In addition, these law enforcement agencies are entities with which the investigators and prosecutors must maintain an ongoing professional relationship. Often there is opposition to the imposition of criminal sanctions on defendants who are not "traditional" criminals. Victims of these crimes also may be persons with whom the majority of persons in our society have little in common. Nonetheless, many state and local officials do pursue criminal sanctions for those who violate individual rights. But, when state and local prosecution is not successful, or does not sufficiently redress the injuries suffered by the victims, federal action can and will be vigorously pursued. Years of experience clearly teach that without a vigorous federal effort many violations would go uninvestigated or without remedy.

The record establishes that our efforts to locate and remedy civil rights abuses are consistently improving. With support of the Congress, the Federal Bureau of Investigation, and state and local law enforcement officials, they will continue to improve.

The criminal abuse of individual rights is not endemic or epidemic in this country, but it does exist. Each incident is a cancer in our society that must be treated promptly and removed entirely. It is the task of the Division to identify and address those abuses through unflagging enforcement of the federal criminal civil rights laws. We can take considerable pride in the unprecedented record compiled to date in carrying out that crucially important mission of the Department of Justice.

CRIMINAL CIVIL RIGHTS PROSECUTIONS
BY STATE AND TERRITORY
JANUARY 20, 1981 – JANUARY 31, 1987



▨ STATES IN WHICH THE UNITED STATES HAS BROUGHT CRIMINAL PROSECUTIONS

◆ REPRESENTS STATES IN WHICH THE UNITED STATES HAS PROSECUTED RACIAL VIOLENCE CASES

CRIMINAL CIVIL RIGHTS ACTIVITIES
OCTOBER 1, 1977 THROUGH JANUARY 31, 1987

INVESTIGATIONS AND PROSECUTIONS

FISCAL YEAR	MATTERS INVESTIGATED	CASES FILED	DEFENDANTS CHARGED	SUCCESS RATE (%)
87	959	16	30	95
86	2,792	49	112	82
85	2,970	45	106	78
84	3,410	47	94	80
83	3,259	39	85	79
82	3,227	56	98	58
81	3,390	42	80	67
80	3,224	42	77	77
79	3,103	50	122	47
78	3,130	36	66	68
77	3,173	28	73	71

PROSECUTIONS INVOLVING RACIAL VIOLENCE

FISCAL YEAR	RACIAL VIOLENCE CASES WITH KKK DEFENDANTS		NON-KKK DEFENDANT RACIAL VIOLENCE CASES		TOTAL NUMBER OF RACIAL VIOLENCE CASES	
	CASES	DEFTS.	CASES	DEFTS.	CASES	DEFTS.
87	2	6	2	2	4	8
86	2	13	5	8	7	21
85	6	16	5	14	11	30
84	5	17	8	19	13	36
83	4	12	6	11	10	23
82	4	7	4	7	8	14
81	2	5	2	2	4	7
80	6	11	3	5	9	16
79	2	23	3	3	5	26
78	0	0	4	6	4	6
77	0	0	4	8	4	8

(II–B)

Educational Opportunities

More than thirty years have elapsed since the Supreme Court's landmark decision in *Brown* v. *Board of Education*, 349 U.S. 294 (1954). During that period, the vast majority of school districts have been placed under administrative or judicial orders designed to secure compliance with the mandate of *Brown*, *i.e.*, the removal of racially discriminatory barriers that stand in the way of a full enjoyment by all school children of equal educational opportunities in the public schools of this country. Thus, in recent years, the nature of school desegregation litigation has changed: there are few occasions requiring the filing of new school desegregation cases.

Accordingly, the work of the Division in enforcing federal statutes that require nondiscrimination in public education, including Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, has focused on "second-generation" desegregation issues. Such issues include quality education for students in predominantly minority schools, needed improvements at long-unattended facilities and physical plants of predominantly minority schools, and the illegal use of race-conscious quotas or goals in admitting students to certain academic programs or assigning faculty to certain schools. In those desegregation cases to which the Division has been a party since 1981, we have been in the forefront in urging adoption of viable and effective remedies — alternatives to mandatory busing — that promote desegregation and quality education.

Moreover, a significant aspect of the Division's enforcement of equal educational opportunities statutes is its close and continued monitoring of compliance by the over 350 school districts under existing desegregation orders and decrees (see Appendix III-A, Educational Opportunities Enforcement, January 20, 1981 through January 31, 1987). As part of that monitoring activity, the Division has sought to return operating responsibility of the school system to local authorities where a desegregation plan has been successfully in place for a number of years and it has been determined that compliance with the outstanding court order has been achieved to the fullest extent practicable.

Finally, a certain amount of resources are devoted to defending the Department of Education in cases generally brought by local school districts seeking to enjoin DOE from carrying out its enforcement responsibilities.

Education Litigation

In enforcing federal statutes that prohibit discrimination in public education on the basis of race, sex, national origin, color, religion or handicap status, the Division's litigation efforts fall into three major categories: elementary and secondary school cases; higher education cases; and monitoring of outstanding court orders.

The elementary and secondary school lawsuits brought by the Division involve a range of problems, as exemplified by the following cases:

- In 1983, the Division received a complaint from black parents in Richland Parish, Louisiana, who alleged that school officials were maintaining predominantly black and predominantly white schools; that white students who lived in a school attendance zone served by a predominantly black school were transferring illegally to predominantly white schools; and that the school officials were hiring and assigning teachers on a racially discriminatory basis. The United States filed suit and negotiated a consent decree with the district requiring that teachers be hired and assigned on a nondiscriminatory basis; that an address verification system be implemented to insure that all students attend their proper schools; that the predominantly black school, which had inferior facilities, be replaced with a new facility; and that two blacks who had been improperly passed over for principalships be promoted to principal or an equivalent position.

- In 1985, the United States filed a complaint against the Phoenix, Arizona, High School District, pursuant to a referral from the Department of Education. Our complaint alleged that the school district was maintaining two high schools for minority students—blacks and Hispanics. The school district and the United States entered into a consent decree that required the two schools in question to be desegregated by converting them to magnet schools.

- In Yonkers, New York, the United States filed suit against the Yonkers Board of Education and the city of Yonkers and its community development agency alleging that the defendants had intentionally caused racial segregation in the Yonkers public schools, and that the city and the community development agency had engaged in a pattern and practice of discriminatory housing development that promoted segregation of both the public schools and subsidized housing. After 2 1/2 years of discovery and a 90-day trial, the district court issued a 600-page opinion finding defendants liable for systemwide racial segregation of the Yonkers public schools and for discriminating in selection and support for sites for subsidized housing. The court concluded that the board had engaged in a series of intentionally segregative decisions concerning school openings, closings, attendance zones, and the assignment of faculty and staff. The desegregation plan approved by the court requires the board to reduce racial and ethnic isolation by operating four magnet schools without specific attendance zones, and a number of attendance-area magnet schools with specified programs (including a scholastic academy, creative arts/extended day, Montessori, computer instruction, pre-professional performing arts, communications arts, and multi-language options).

Although discriminatory admission policies of formerly segregated public colleges and universities were abolished long ago, racial differences in opportunity have lingered, and the Division has been active in a number of higher education cases that address these problems. Our major litigation activity has focused on cases involving the statewide higher education systems of Louisiana, Mississippi and Alabama. In addition, we have been instrumental in the ongoing desegregation efforts involving colleges and universities in Tennessee and Maryland.

In Alabama, we negotiated consent decrees with four of the defendant institutions requiring the implementation of a plan designed to increase minority student enrollment and to increase minority faculty and administrators. The consent decree signed with the University of South Alabama also contains a pre-professional program designed to create a pool of qualified minority students who will be eligible to enroll in the university's medical school, through summer workshops designed to enhance academic skills. Moreover, because few blacks historically have obtained doctoral degrees, thus contributing to the difficulty of blacks' achieving academic professorships, the consent decrees signed by these universities contain faculty development, recruitment, and nondiscriminatory scholarship programs designed to increase the number of blacks who advance in academia.

In Louisiana, similar doctoral degree provisions were negotiated in a comprehensive settlement agreement with the State. In five years, 14 persons graduated from doctoral degree programs under the Louisiana consent decree program and 16 others are currently participating in the program.

Additionally, the Division has obtained relief for women applicants who were discriminatorily denied admission to an institution of higher education. In *United States* v. *Massachusetts Maritime Academy*, the court issued an opinion on March 22, 1984, that found that the defendant Academy had engaged in intentional discrimination against women with respect to recruitment and admissions, and that the effects of the Academy's discriminatory practices had not been eliminated. The defendant Academy appealed and the court of appeals affirmed the district court. Subsequently, the Academy implemented a plan designed to correct its discriminatory admissions and recruitment practices. Recently, the United States and the Academy agreed on a procedure to be used by the Academy in identifying and admitting women applicants who had been discriminatorily denied admission between 1983-1985.

Monitoring of School Desegregation Plans

One of the primary responsibilities of the Division in ensuring equal educational opportunities is its monitoring school districts' compliance with school desegregation orders — involving over 350 school districts — in cases in which the United States is a party. The Division has established a separate component to handle this important function and has developed an effective computerized system for analyzing the compliance reports submitted by the districts.

The result is a more coordinated, systematic and efficient approach to our compliance work. The Division now has better access to compliance information and the ability to identify possible problem areas. For example, our recent review of the reports of one district revealed a problem with racially segregated classrooms. We worked with the local authorities to structure a new student placement method which, we believe, will result in fewer racially polarized classrooms.

The Division has also reviewed many proposals to modify court-ordered desegregation plans, including motions for permission to close schools, to change boundary lines or otherwise to modify plans. Our practice has been to encourage early discussions with a district to prevent unnecessary litigation. Through our computerized monitoring system, we are now able to review these proposals thoroughly and quickly. In many cases, we have been able to work out modification agreements with the districts which result in prompt court approval.

Occasionally, school boards have requested that a school system be declared "unitary" with operating authority returned to locally elected school officials. Each case is carefully reviewed to determine whether the past segregation practices have been successfully eliminated, whether there has been good faith compliance with the decree to the fullest extent practicable, whether any recent acts of discrimination have occurred, or whether there is any other reason for continuing court supervision. When we are satisfied that judicial supervision and control over a school system that has been subject to a desegregation order for a number of years are no longer warranted, we have supported the school board's efforts to return the school system to local control. Such was the case with our *amicus* participation in the recent litigation involving the Norfolk, Virginia, school district, *Riddick* v. *City of Norfolk*, 784 F.2d 521 (4th Cir. 1984), *cert. denied*, 55 U.S.L.W. 3316 (U.S. Nov. 3, 1986). Of course, where we remain unpersuaded that the requisite showing can be made by school authorities seeking to bring to an end outstanding desegregation orders, we will oppose efforts to declare the system unitary.

Magnet Schools

Since 1981, the Division has played a lead role in exploring and urging upon courts and school districts remedial alternatives to mandatory busing, alternatives designed to achieve meaningful desegregation in an enhanced educational environment. To this end, we have fashioned a workable blueprint for constitutional compliance through combinations of devices such as school closings, boundary adjustments, magnet school plans, and incentives for voluntary transfer. Although differently packaged from locale to locale, the essential thrust of the magnet idea fits virtually every situation: it is, in simplest terms, to provide educational incentives through use of intellectually exciting and academically fulfilling curriculum and extracurriculum program offerings, which are strategically placed throughout the public school system so as to attract minority and nonminority students to enroll in the magnet schools and programs by choice. We have found that such programs, if carefully devised and enthusiastically supported by the school officials and the community, not only enhance student motivation but also have a positive desegregative impact by drawing students, irrespective of race, to a particular curriculum. The magnet programs implemented over the past five years have ranged from enhanced academic programs for the gifted and talented to a program emphasizing environmental education and athletics; from computer science programs to programs for the performing arts. The key, however, to each of these magnet programs is the educational incentives provided by a curriculum package that attracts students of all races.

Notwithstanding initial criticism, it now appears that this alternative formula has gained widespread acceptance by litigants and courts alike as a more effective desegregation technique. In cities as diverse as Chicago, Illinois, and Bakersfield, California, plans conceived with the help of local educators are beginning to work. Nonminority enrollment losses occasioned by mandatory busing plans have begun to decline; educational quality is improving; parental involvement has increased; and positive, stable desegregation results are being achieved.

We are encouraged by these developments and plan to continue and expand this effort. To date, the Division has successfully urged district courts in 19 cases to approve magnet school programs as part of an effective desegregation remedy (see Appendix III-B, School Desegregation Cases with Magnet Schools/Programs as Remedial Components Since 1981).

For example, in Ector County, Texas, eight racially identifiable schools were converted to magnet schools beginning in 1982. In the 1985-1986 school year, each of the schools had become fully desegregated. Three schools, which had less than 5% white student enrollment in the 1983-1984 school year, achieved greater than a 40% white student enrollment in the 1985-1986 school year, and three schools, which had approximately a 20% minority student enrollment in the 1983-1984 school year, attained approximately a 50% minority student enrollment in the 1985-1986 school year.

In Marion County, Florida, a formerly all-black school was converted to a magnet. Upon implementation of the magnet school — Basics Plus — the school filled to capacity with a 70% white, 30% black student enrollment. Student demand was so great that school officials have a waiting list of students desiring to enroll in the school.

And, in Chicago, in addition to operating 32 full-size magnet schools, the school board has installed magnet programs within regular schools at 60 sites. Each program is tailored to reach or maintain stable levels of desegregation within the school as a whole and may, for example, involve as little as an intensive Spanish class to attract black, white, and Asian students to what would otherwise be an all-Hispanic school, or several classes composing a fine arts curriculum.

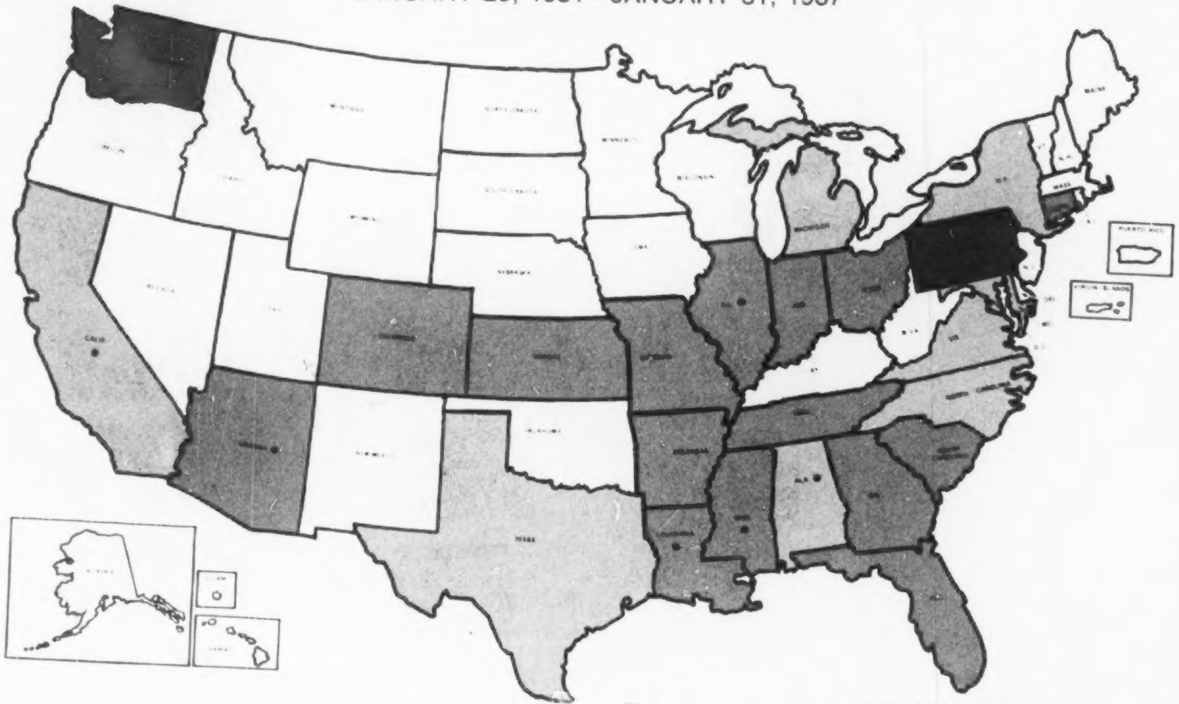
Since 1981, magnets also have been adopted in a number of cases in which the United States is not a party. For example, Prince Georges County, Maryland, was ordered by the court to develop and implement a modified desegregation plan. A busing plan developed by a nationally known desegregation expert was rejected by the school officials and by the community and a magnet school plan was later adopted. The plan has apparently proven to be a success. Recently school officials announced that nine additional magnets would be implemented during the next few years to accommodate the many students whose names had been placed on waiting lists. Similar successes are reported in San Diego, California, Milwaukee, Wisconsin, Portland, Oregon, and San Jose, California.

Conclusion

Magnet schools have proven to be a viable alternative desegregation remedial component for many school systems. We are continuing to explore with a number of school officials, corporate executives, communication experts and education authorities ways to improve, enhance, refine and further develop the magnet concept so that it is economically attractive on a more widespread basis to public school systems throughout the country that are interested in providing parents and students alike, irrespective of race, color or ethnic background, a quality educational opportunity in an academic environment fully responsive to the desegregation directive of *Brown* v. *Board of Education*.

CIVIL RIGHTS DIVISION

EDUCATIONAL OPPORTUNITIES ENFORCEMENT
JANUARY 20, 1981 – JANUARY 31, 1987


MAINE
VT
N.H.
MASS
N.Y.
R.I.
N.J.
DEL.
MD
D.C.
W.VA
VA
KY
MICHIGAN
ALA
CALIF
TEXAS
PUERTO RICO
VIRGIN ISLANDS

▨ STATES IN WHICH CASES ARE BEING MONITORED

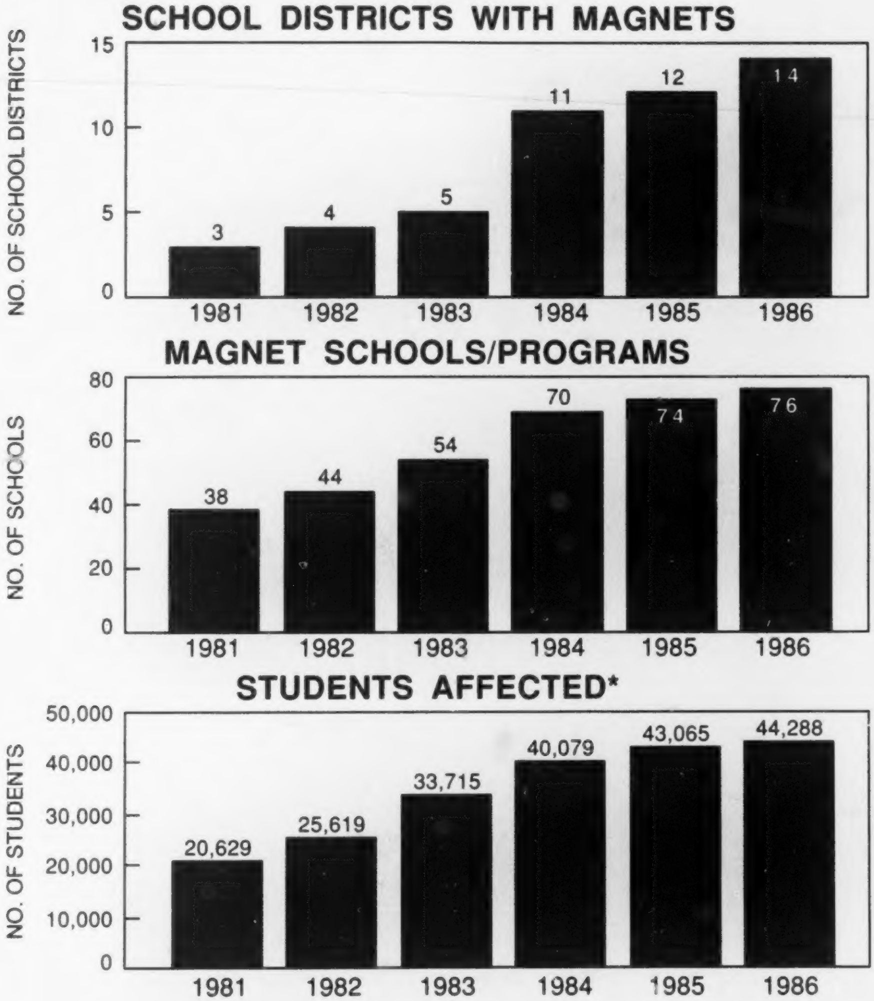
■ STATES IN WHICH INVESTIGATIONS ARE PENDING

☐ STATES WITH INVESTIGATIONS AND MONITORING ACTIVITIES

• DENOTES STATES IN WHICH THE UNITED STATES HAS FILED LAWSUITS SINCE 1981.

CIVIL RIGHTS DIVISION

SCHOOL DESEGREGATION CASES WITH MAGNET SCHOOLS/PROGRAMS AS REMEDIAL COMPONENTS SINCE 1981 (CUMULATIVE)


SCHOOL DISTRICTS WITH MAGNETS

MAGNET SCHOOLS/PROGRAMS

STUDENTS AFFECTED*

*Student enrollment unavailable for Huntsville, Alabama and Big Spring, Texas for 1985.

(III–B)

Equal Employment Opportunities

The Division has enforcement responsibility under Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972 and the Pregnancy Discrimination Act of 1978), the State and Local Fiscal Assistance Act, and other federal laws prohibiting employment practices which discriminate on grounds of race, sex, religion and national origin. Its jurisdiction under these statutes is limited, however, to litigation concerning the practices of state and local government employers and, in a few circumstances, federal contractors.[1] In addition, upon referral by the Department of Labor, the Division prosecutes employment discrimination litigation against federal contractors under Executive Order 11246, as amended, and it represents the Department of Labor and other federal agencies as defendants when such agencies are sued for alleged overzealous enforcement of federal laws prohibiting discriminatory employment practices or when their administrative determinations are challenged through judicial review.

Employment Discrimination

Federal law requires equal employment opportunity, without discrimination on grounds of race, sex, religion or national origin. While the ideal of equal employment opportunity has wide verbal support, strict adherence to this federal mandate is not always as widespread.

Nonetheless, enormous strides have been made by state and local governments in providing equal employment opportunities for blacks, women, Hispanics and other minorities since the 1972 amendments to Title VII which broadened its coverage to reach public employers. Some of that improvement has occurred through litigation, some as a result of independent decision-making by the governmental unit involved, and some through a combination of those factors. While the progress has been substantial, it has unfortunately been uneven and sporadic. It appears, for example, to have been most evident in the center cities of large metropolitan areas and other units of government with a substantial proportion of minority voters. Even in those governments, however, resistance to that progress has at times been evident particularly in fire, police, and highway departments. This resistance has been triggered in part by local affirmative action plans and consent decrees which, through use of so-called goals-and-timetables or quotas, grant discriminatory employment preferences in promotions and hiring based upon race, sex or national origin. Strong resistance to minority employment has also persisted in many all-white suburban communities, which have sought to avoid the employment of minorities through durational residency requirements, recruitment directed at white communities only, and other racial techniques. And, in traditionally male jobs, such as fire fighter, prison guard and deputy sheriff, particularly in rural and certain suburban areas, discrimination against women frequently persists.

While some employment discrimination by public employers is and can be addressed privately through individual complaints (filed with the EEOC and then referred to the Department of Justice), all too often individual enforcement of federal equal employment opportunity laws is confronted with almost insurmountable legal costs and fees involved in developing and litigating the case. The Division can therefore play a critical role in enforcing Title VII and ensuring equal employment opportunities for all individuals through the investigations and enforcement actions it initiates (see Appendix IV-A, Employment Discrimination Cases Filed January 20, 1981 through January 31, 1987).

A few examples of the kinds of problems the Division has encountered over the last several years through its investigations and information generated through litigation are illustrative:

- Fourteen Cook County municipalities adjoining or close to Chicago had over 2,300 municipal employees, of which not one was black; and 15 suburban Detroit municipalities in Wayne, Oakland and Macomb counties had approximately 7,000 employees, of which not more than two, or 0.03%, were black.
- Four large suburban school districts in the Atlanta and Houston areas discriminated against blacks in recruitment and hiring.
- The departments of corrections of Florida, Indiana and Massachusetts and the prisons of Philadelphia followed the practice of hiring and assigning correctional officers on the basis of sex, thereby sharply limiting the employment and promotional opportunities of women.

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[1] Title VII vests responsibility for its enforcement against private employers, labor organizations and employment agencies in the Equal Employment Opportunity Commission.

- The police departments of Nassau County and Suffolk County (New York), the seventh and twelfth largest police departments in the country, and the state police agencies of Maine, Massachusetts, New Hampshire, Rhode Island and Vermont employed numerous recruitment, testing and hiring practices which discriminated against women, blacks, and Hispanics.

Employment Litigation and Enforcement Efforts

The Division's response to these problems and its enforcement efforts designed to secure equal employment opportunities for all individuals have produced a record in which the Department and Division can take great pride. Since 1981, the Division has not only substantially increased the average number of annual case filings over earlier periods—the overwhelming majority of which (over 97%) challenge discriminatory employment practices against racial, ethnic and religious minorities and/or women—but has also significantly increased the amounts of back pay awarded to victims of discriminatory practices. For example, in the four calendar years from 1977 through 1980, the Division filed a total of forty (40) new cases, or an average of ten (10) per year. For the calendar years 1981 through 1986, however, we filed a total of eighty-seven (87) new cases, or an average of fourteen and a half (14.5) new cases a year (see Appendix IV-B, Employment Discrimination Cases Filed January 20, 1977 through December 31, 1986). Similarly, for the same period 1977 through 1980, we obtained consent decrees providing about $7.5 million in back pay to the victims of past discriminatory practices, or an average of $1.88 million in back pay awards per year, while from 1981 through 1986 we obtained consent decrees providing $16.3 million in back pay, or an average of $2.71 million in back pay awards per year (see Appendix IV-C, Employment Back Pay Awards, January 20, 1977 through December 31, 1986).

Statistics alone tell only a small part of the story. The precedential effect and deterrent results of our litigation and enforcement efforts, while not quantifiable, certainly represent an important measure of the Division's success in the equal employment opportunity arena.

- For example, in response to the discriminatory durational residency requirements for application for municipal employment and other related discriminatory practices by virtually all-white suburbs of Chicago, which operated to exclude all or substantially all black applicants from competing for municipal jobs, the Division initially prosecuted the first of these cases, *United States* v. *Town of Cicero*. (The *Cicero* case also included claims of housing discrimination, making this the first case in which the Division alleged both employment and housing discrimination in the same case). Following a successful appeal from the district court's denial of our motion for a preliminary injunction, in late 1985 and 1986, we filed 13 additional suits against Cook County municipalities under this program. In the *Cicero* case itself, and in 10 of the more recently filed cases, we now have consent decrees or judgments in place eliminating the discriminatory durational residency requirements and establishing aggressive recruitment programs directed toward the previously excluded black applicants.

- Through investigations, we also found that many of the Detroit suburbs had employment practices and profiles similar to those in the Chicago suburbs. As of January 31, 1987, suits against 10 such suburban municipalities have been filed and decrees obtained in four of them; an additional five suits against such municipalities have been authorized.[2]

- Our litigation program involving suburban municipal employers also resulted in a consent decree, after a trial and finding of liability on a government-wide basis, against the County of Fairfax (Virginia), calling for $2,750,000 in back pay to be distributed among 695 identified victims of discrimination, with priority job offers to many of these who were still interested in employment. This represents the largest back pay award ever obtained against a municipal defendant in a Title VII case.

- Our school district program included suits against four large suburban school districts, two in the Atlanta area, which have resulted in decrees, and two in the Houston area, which are still in litigation. In each of these cases, we found recruitment and hiring practices which discriminated against qualified black applicants for teaching positions.

- We brought nine suits to enforce the terms of the Pregnancy Discrimination Act, of which we have obtained decrees in eight, including a litigated decision providing $2,095,810 in back pay to 4,961 women, who were harmed by operation of a state temporary disability law which granted lower benefits to women disabled by pregnancy than to employees otherwise disabled. The other seven cases involved the firing of women because of pregnancy or, more frequently, the granting of lesser benefits to women because of pregnancy than to other employees disabled by other conditions.

- We brought suits and obtained decrees against seven state police agencies challenging recruitment and hiring practices which discriminate against women; and, in two of these suits, practices which also discriminate against blacks.

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[2] These five additional suits were filed on February 5 and 6, 1987.

- In 1983, we filed suit against the city of Gallup, New Mexico, alleging systemic discrimination against American Indians and obtained in 1986, shortly before the scheduled trial date, a consent decree, which provides for $750,000 in back pay and priority job offers with retroactive seniority to at least 225 American Indians and three non-Indian women. We believe this decree provides the most thorough relief and the greatest amount of back pay for American Indians in any employment discrimination case.

- We also filed our first suit seeking relief from discrimination by a municipal fire department against individuals of the Jewish religion, and our first suit seeking relief from discrimination by a school board on account of Iraqi national origin. Consent decrees have been entered in both suits.

Since 1981, we have had district courts rule against us on the merits in only four employment cases, and in two of those four cases, we later prevailed in the Supreme Court[3] or in the Court of Appeals for the Fourth Circuit.[4] A third case is presently on appeal to the Eleventh Circuit.[5] Thus, in only one case have we had a final loss on the merits.[6] Indeed, the great majority of our cases settle on terms that guarantee an end to discriminatory practices and "make whole" relief to identifiable victims — which generally result in substantial cost-savings to all parties.

Of approximately 53 suits in which we have represented federal agencies as defendants since January 20, 1981, we have prevailed either procedurally or on the merits in 46; we have lost one such case; and the remaining six are pending.

Another, perhaps more important measure of success is the change in the employment picture of employers subject to our consent decrees. Enforcement of the decrees previously obtained has long been an important component of our litigation. Our experience has been that entry of the decree in many cases is only the first step in the process of securing compliance with the law.[7] The number of decrees we enforce has risen from approximately 85 in January 1981, to 142 at the present time (see Appendix IV-D, Employment Consent Decrees Entered January 20, 1977 through December 31, 1986).

A review of compliance reports from 51 decrees involving hiring and recruitment practices, which were entered prior to 1984 and continue to have operative effect, discloses that there has been substantial progress under most of our decrees in the recruitment and hiring of persons in the group or groups of discriminatees. In many of the decrees, the results have literally transformed the nature of the employer's work force. And, importantly, these results have been obtained in decrees entered since September 1981 without the use of hiring goals or employment quotas. Since September 1981, we have not sought as a court-ordered remedy, nor negotiated as part of our decrees, annual hiring goals. Yet, with the strict injunctive provisions prohibiting all forms of employment discrimination by the employer, make-whole relief for all identifiable victims of discrimination, rigorous affirmative action measures requiring recruitment, training, and outreach programs, and extensive reporting requirements, the employers under our decrees have achieved considerable success at integrating their work forces without the stigmatizing and discriminatory effects of employment preferences favoring a limited number of certain groups on the basis of race, sex or national origin.

Our decrees have the virtue of insuring that employment decisions are made on a *nondiscriminatory* basis, by utilizing affirmative action recruitment and outreach programs that open doors of opportunity to all individuals, without regard to race and sex. Moreover, we have found that such affirmative techniques have helped to bring increasing numbers of minorities and women into the work force.

Conclusion

The Supreme Court clearly admonished last Term that preferential goals and timetables are not be used except in the most egregious and flagrant cases of discrimination and only as a last resort — and then only in the most "narrowly tailored" manner to ensure minimal interference with the rights of innocent third parties. The relief required in our consent decrees provides a viable "affirmative action" alternative that is plainly less intrusive and has proven most effective. It has, moreover, not only served to redress the unlawful conduct of the targeted employer and its continuing effects; more generally, it has helped to refocus attitudes in the employment areas so that the emphasis is once again a positive one centered on *individual* rights and equal *opportunity*, rather than a negative one centered on *group* entitlements and equal *results*.

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[3] *Bazemore* v. *Friday*, 54 U.S.L.W. 4972 (U.S. July 1, 1986) (pending in the 4th Cir. as Nos. 82-1873, 82-1927, and 82-2065).

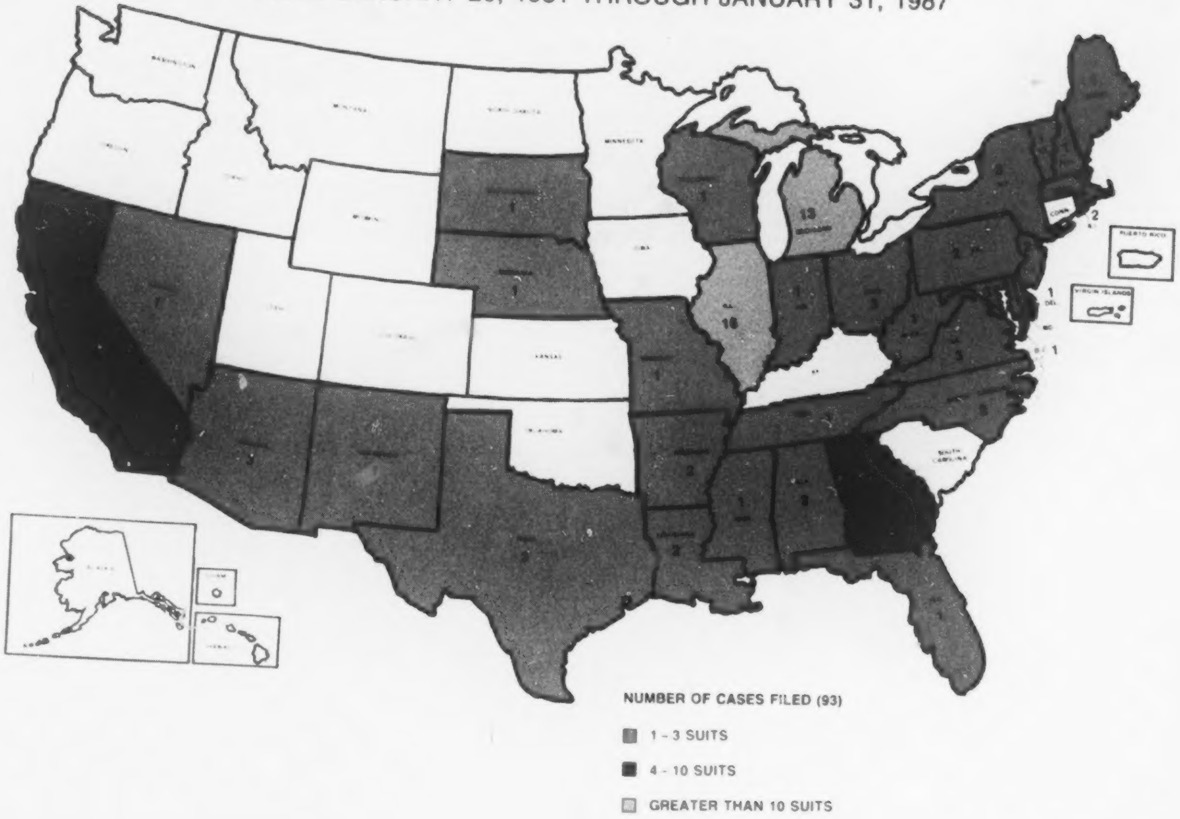
[4] *United States* v. *Gregory, Sheriff of Patrick Co.*, 38 Empl. Prac. Dec. Par. 35,577 (4th Cir. 1985).

[5] *Wilks and United States* v. *Arrington*, No. 86-7108 (pending in the 11th Cir.).

[6] *United States* v. *Texas Highway Department*, Civ. No. A-78-287 (W.D. Tex. 1982) (decision denying relief dated August 17, 1982). In addition, we lost one Pregnancy Discrimination Act case on a procedural point, although our investigation and suit resulted in the victims of the employer's practice receiving most of the relief to which they were entitled. See *United States* v. *Glendale*, Civ. No. 84-0682(R) (C.D. Cal. 1984) (filed February 2, 1984; summary judgment entered April 2, 1984).

[7] In conjunction with our monitoring of decrees to ensure compliance with the law, following the Supreme Court's decision in *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984), we undertook a review of our outstanding and operative decrees to determine whether modification was required in light of our reading of this decision as precluding a court's ordering, as a remedy, any preferences in hiring or promotions based on race, sex or national origin to persons other than identifiable victims of the employer's discrimination. This initiative was held in abeyance pending the Supreme Court's resolution of the issue. Ultimately, the Supreme Court ruled that such preferential relief was available only rarely and in certain very limited circumstances. As a consequence, it was determined that the decrees could appropriately be read in a manner wholly consistent with the Supreme Court's ruling without requiring modification.

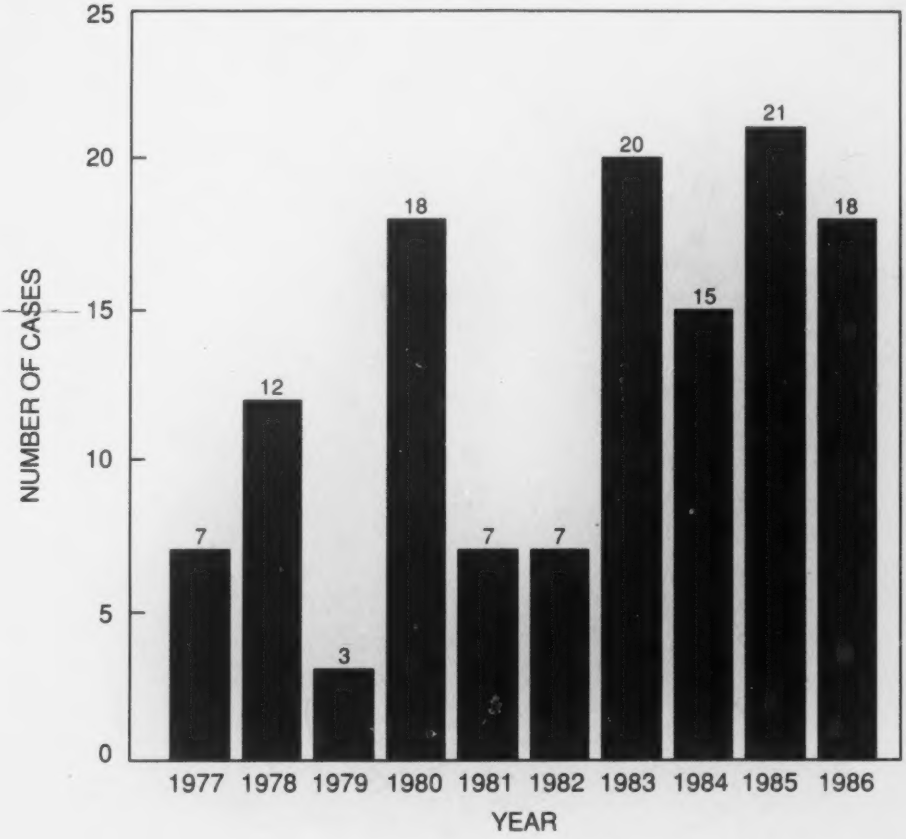
CIVIL RIGHTS DIVISION
EMPLOYMENT DISCRIMINATION CASES
FILED JANUARY 20, 1981 THROUGH JANUARY 31, 1987


MINNESOTA
KANSAS
SOUTH CAROLINA
CONN.
DEL.
PUERTO RICO
VIRGIN ISLANDS
13
16
2
1
3
NUMBER OF CASES FILED (93)
▨ 1 - 3 SUITS
■ 4 - 10 SUITS
□ GREATER THAN 10 SUITS

(IV – A)

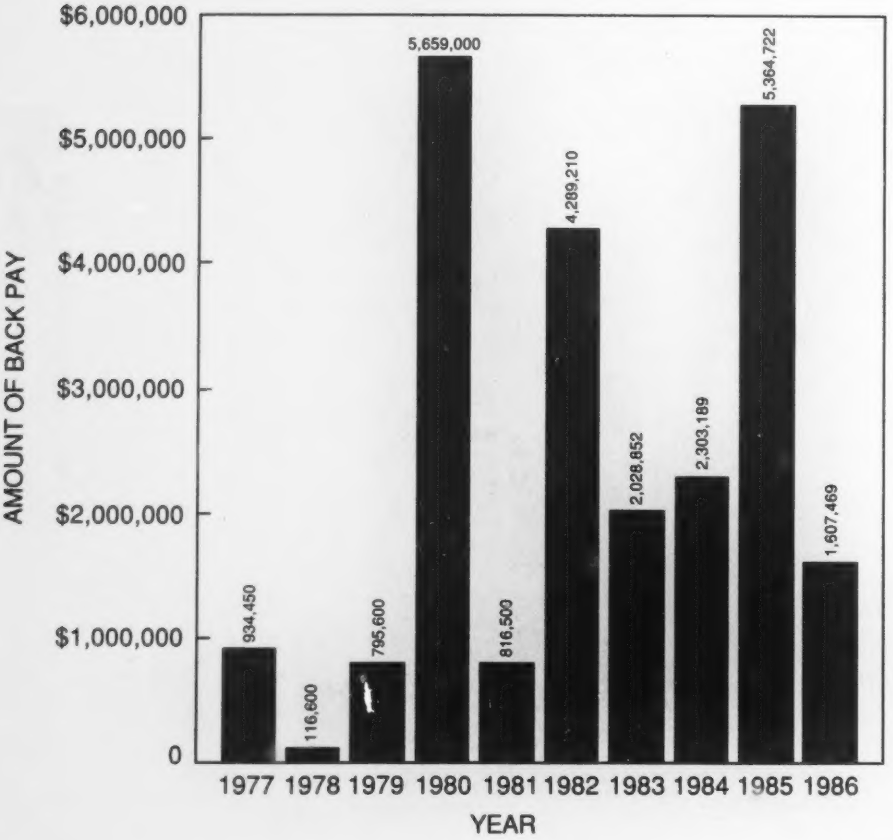
CIVIL RIGHTS DIVISION

EMPLOYMENT DISCRIMINATION CASES FILED
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



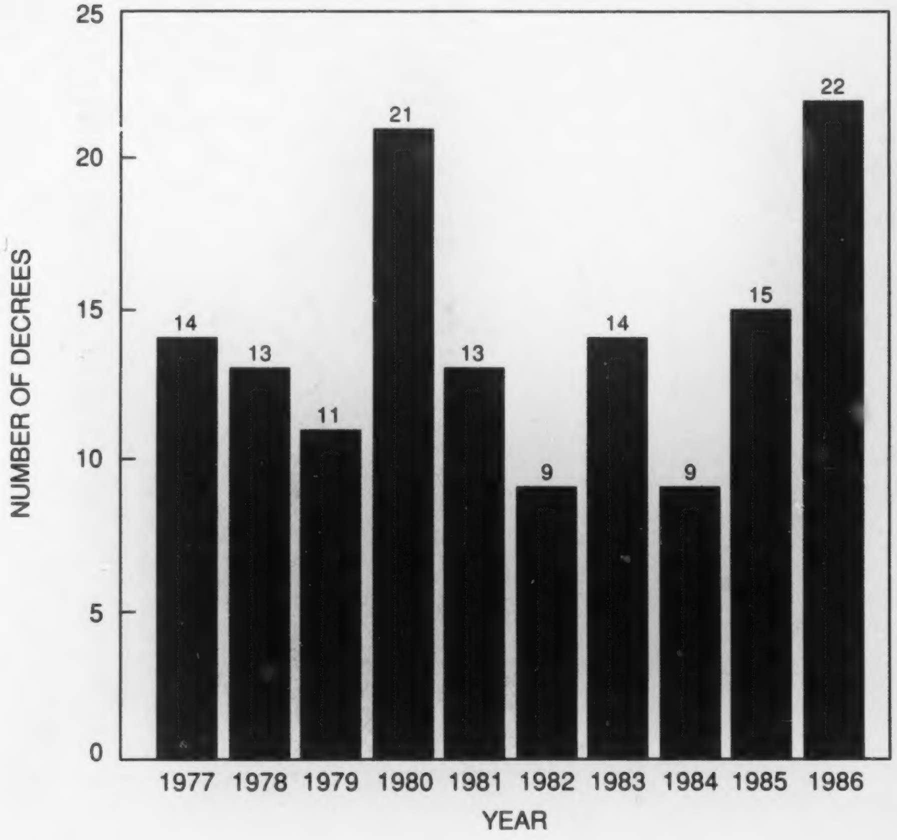
CIVIL RIGHTS DIVISION

EMPLOYMENT BACK PAY AWARDS
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



CIVIL RIGHTS DIVISION

EMPLOYMENT CONSENT DECREES ENTERED
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



Fair Housing/Consumer Credit/Public Accommodations

As part of a general reorganization within the Civil Rights Division, the Housing and Civil Enforcement Section was created in November 1983 to accomplish more effective enforcement of the federal statutes prohibiting discrimination in housing, consumer credit, and public accommodations.

As its name suggests, this new Section has principal responsibility for enforcing the Fair Housing Act of 1968, which prohibits discrimination in housing on the basis of race, color, religion, sex and national origin. The statute authorizes the Attorney General to file suit where there is a pattern or practice of discrimination or where a group of persons has been denied rights guaranteed by the Act. In addition, the Section enforces the Equal Credit Opportunity Act (ECOA), prohibiting discrimination in credit transactions, and it coordinates with the United States Attorneys' Offices in connection with the prosecution of public accommodations cases under Title II of the Civil Rights Act of 1964.

Since November 1983, the Section has received over 700 complaints, conducted nearly 500 investigations (see Appendix V-A, Distribution by State of Housing, Equal Credit and Public Accommodations Investigations, November 1, 1983 through January 31, 1987), and filed 73 lawsuits (see Appendix V-B, Distribution by State of 73 Housing, Equal Credit and Public Accommodations Lawsuits, November 1, 1983 through January 31, 1987). This volume of matters and cases is an unfortunate commentary on the reality that many Americans still do not enjoy equal access to housing, credit and public accommodations. In response, the Civil Rights Division through this new Section has undertaken to establish an enforcement presence throughout the nation to deter and to remedy such unacceptable behavior.

Fair Housing

Although nearly 20 years have passed since enactment of the Fair Housing Act, a broad range of problems in all geographic areas of the United States still persists. Many owners or managers of apartment buildings, both large and small, refuse to rent to blacks or other minorities. Occasionally, blacks, who are most often the victims of discriminatory housing practices, are frankly told that they are not welcome. Such open discrimination occurs infrequently, however. More often, blacks who inquire are told simply that no apartments are available. In other situations, apartments are rented to some blacks and other minorities, but efforts are made to limit or even to reduce the total number of units they can occupy. While these tactics are claimed by some as necessary to promote or maintain integration, the cold truth is that such "integration maintenance" techniques serve only to impose yet another discrimination barrier to the fair housing ideal for blacks and other minorities.

They are no less offensive than the other strategies employed to defeat the Fair Housing Act, such as "steering" practices of real estate companies, pursuant to which white homeseekers are routed to all-white neighborhoods and black homeseekers are routed to black or integrated neighborhoods; or the marketing and sale of time-share resort properties in a racially discriminatory manner; or the publication in newspapers of discriminatory advertisements for housing; or the prohibiting by municipal ordinance of "testing" by fair housing groups in order to identify continuing instances (usually of a more subtle nature) of housing discrimination.

Litigation Under The Fair Housing Act

Fair Housing Act suits brought by the Division to redress discrimination in the rental of apartments or mobile homes have altogether involved defendants operating more than 24,000 rental units. Our suits against time-share developers, affecting resort properties located in Alabama, Florida, Georgia, Nevada, Texas, South Carolina, and California, have involved over 30,000 time-share units. As a result of our litigation efforts, these units are now open to all on a nondiscriminatory basis.

One Division goal in enforcing the Fair Housing Act has been to create an enforcement presence in all areas of the country. The 53 housing cases brought by the Division since late 1983 include suits in 25 states. At the same time, we have not hesitated, where necessary, to focus our attention in a particular metropolitan area. For example, in late 1983 and early 1984, we filed eight suits alleging racial steering against real estate companies in the Chicago area. This initiative not only succeeded in reforming the practices of the particular defendants involved, but also sent a strong message to other realtors in and around

Chicago that such unlawful real estate practices will not be tolerated.

On another front, the Division has pursued some cases against providers of rental housing located in very small communities based on particularly egregious instances of racial discrimination. Typically, in such communities, there are no large housing providers; minority applicants have limited opportunities to obtain housing elsewhere and rarely have the resources to take private action to enforce their fair housing rights. Thus, when we come upon discrimination that is egregious and no other enforcement steps are being taken, we will respond even though the unlawful actor may be a small operator. No housing provider, whatever the size, can be allowed to regard himself to be above the law; nor will we allow the national policy of equal housing opportunity to become an empty promise for minorities living in small communities.

Our overall enforcement record underscores that commitment. Forty-three consent decrees have been entered in housing discrimination cases brought by the Division since January 1984. Such consent decrees, which resolve lawsuits without the expense and delay of a trial, are tailored to the facts of each case. Usually, however, they provide for (1) an injunction against future discrimination; (2) an educational program designed to ensure that the defendant and its employees are fully aware of their obligations under the law and the consent order; (3) notice to the public that the defendant follows a policy of nondiscrimination; (4) recordkeeping and periodic reporting to permit us to monitor the defendant's activities; (5) relief for individual victims;[1] and (6) affirmative outreach and advertising requirements, in appropriate cases.

The 53 fair housing cases filed since late 1983 have involved a variety of issues and defendants (see Appendix V-C, Fair Housing Suits by Type of Defendant, November 1, 1983 through January 31, 1987). For example, the owners or managers of apartment buildings, including four public housing authorities, were defendants in twenty of the cases. Three similar suits were filed against the owners or operators of mobile home parks. We also sued an apartment referral service for acceding to the discriminatory policies of apartment owners to which they made tenant referrals.

In three of our suits against public housing authorities, we alleged that the authorities unlawfully discriminated against minority applicants on waiting lists by renting to later-applying white applicants in order to maintain a particular level of integration. Similar "integration maintenance" practices are at issue in one of our suits against a large private, but publicly subsidized, apartment complex. In that case, the defendants set a racial occupancy quota limiting the number of blacks and other minorities before the first tenant ever applied, and a quota has been maintained ever since. We intervened in another private suit where a settlement required the owners and operators of several large apartment complexes to rent to a specific quota of black applicants. This requirement was inconsistent with a prior consent decree which we had negotiated with the same defendants.

Real estate companies, agents or brokers were the defendants in 13 of our cases under the Fair Housing Act. All but one of those cases involved allegations of racial steering; the remaining case and a case against a mobile home sales company alleged refusals to sell on account of race.

Developers and marketers of time-share resort properties have been the defendants in eight of our suits. In two of these cases, where the developers themselves financed the sales, we also alleged violations of the Equal Credit Opportunity Act.

Another group of suits did not involve the actual denial of housing but challenged instead practices which inhibit the full exercise of fair housing rights. Thus, for example, we filed four suits and an *amicus* brief in a fifth challenging the practice of recording racially restrictive covenants in official deed books, and the practice of neighborhood associations of requiring such discriminatory covenants. We entered into voluntary agreements with three other recorders of deeds which were willing to take the actions we deemed necessary to cure the violations. We have also sued a large Southern newspaper which regularly published discriminatory housing advertisements. Finally, we have sued a municipality to enjoin enforcement of its ordinance which allows fair housing testers to be prosecuted and requires them to register before conducting any test, a requirement which totally eliminates the effectiveness of any testing. We contacted 15 other cities which had similar ordinances. In response to our letters, these cities repealed their anti-testing ordinances. We filed suit against the one city that was unwilling to take such voluntary action. Since November 1983, we have also filed two successful motions for contempt to enforce compliance with court orders resolving our cases.

Two other major litigation activities pursued by the Division have been suits against municipalities — Cicero, Illinois, and Yonkers, New York — combining for the first time housing discrimination claims with claims of discrimination in employment or educational opportunities. We filed suit against the town of Cicero, Illinois on January 21, 1983, alleging both housing and employment discrimination by this virtually all-white Chicago suburb. After extensive discovery and a favorable ruling from the court of appeals on a preliminary injunction involving the employment claims, the parties agreed to a consent decree which was entered in 1986.

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[1] Although the courts have ruled that we cannot recover monetary damages for the victims of unlawful discrimination, we are entitled to "equitable relief" on their behalf, which can include monetary relief in the form of restitution or other equitable relief. Thus, for example, where we can identify the individuals who were denied housing because of a defendant's discriminatory conduct, we require that such persons be offered the next available units or be given some other priority consideration in order of application date.

The suit against the city and school board of Yonkers, New York, although filed in the last weeks of the prior administration, was litigated by the new Section. This was the first case to combine education and housing discrimination claims. After over 100 days of trial, the district court in November 1985 issued a liability opinion sustaining our claims. Remedial orders were issued in the spring of 1986. The case is now pending on appeal.

Housing Coordination and Cooperation

We have made special efforts to coordinate with other governmental and private fair housing groups throughout the country in order to maximize the overall enforcement efforts of all interested groups. We have signed four formal agreements with state and local enforcement agencies, providing for referral of matters to us where it appears that we may be better able to handle a case because of the nature of the case and the investigation and litigation resources available to the Division. Three suits have resulted from such state and local referrals; three other suits resulted from Department of Housing and Urban Development (HUD) referrals of Fair Housing Act complaints; and two suits against housing authorities have resulted from HUD Title VI referrals.

Legislative Initiatives

In the 98th and 99th Congresses, the Administration proposed amendments to the Fair Housing Act which would expand and strengthen our enforcement powers in two principal ways. First, the proposed legislation would allow us to seek civil penalties of up to $50,000 for an initial violation and $100,000 for a subsequent violation. The threat of such stiff penalties, we believe, would be a significant deterrent to would-be discriminators. Second, while we would retain our current pattern and practice authorization for bringing suit, the proposed amendments would also allow us to bring suits to remedy individual instances of discrimination upon referral from HUD, where HUD has first tried but failed to conciliate the matter.[2] The proposed legislation would also add handicapped persons to those protected against housing discrimination.

Consumer Credit

The Division's enforcement of the Equal Credit Opportunity Act (ECOA) also deserves mention. Since November 1983, nine suits have been filed alleging violations of the Equal Credit Opportunity Act (as noted above, four of those suits alleged violations of the Fair Housing Act as well). Four of these suits have involved discrimination against American Indians where creditors refused to grant credit in circumstances where the applicants resided on Indian reservations and the collateral for the loans was to be located there. Two other suits were filed against the operators of time-share resorts, and the remaining three suits involved thrift institutions which discriminated in making short-term loans on various bases: sex, marital status, race, public assistance, or part-time income.

Public Accommodations

As mentioned, this Section of the Division has the additional responsibility of coordinating with the United States Attorneys' Offices in the enforcement of Title II of the 1964 Civil Rights Act, which prohibits discrimination in places of public accommodations, such as hotels, restaurants and places of entertainment.

In the late 1970s, the Division chose to pursue discrimination in public accommodations as a low priority matter. In 1979, the principal authority for enforcing Title II was transferred from the Civil Rights Division to the Offices of the United States Attorneys, with the Division maintaining general coordination and review responsibilities. An unfortunate consequence of that decision was a significant drop in the number of Title II actions. Since 1983, however, with the establishment of the new Section, we have revitalized the Title II enforcement program, generating a noticeable surge in the number of Title II prosecutions over the past three years. While only three Title II suits were filed from 1981 through 1983, 16 suits have been filed under Title II since November 1983. Seven of the Title II suits were handled by United States Attorneys' Offices, and the remaining nine were handled directly by the Division. Twelve of the suits involved nightclubs/restaurants which attempted to limit the number of black patrons by imposing discriminatory cover charges, membership fees, or dress codes. Two cases involved swimming clubs which purported to be private clubs, but in reality admitted members of the general public who were white, but not those who were black. Another case brought under Title II and the Fair Housing Act involved a recreational park which also rented trailer spaces.

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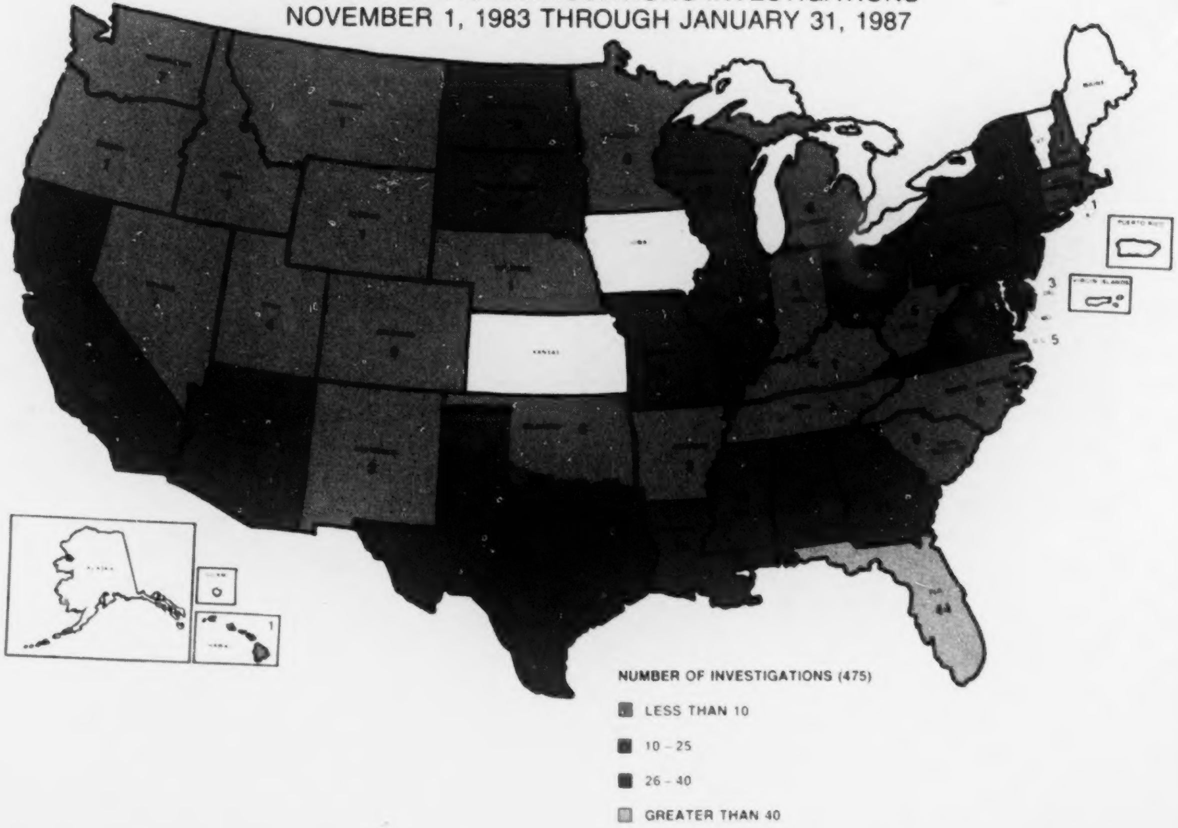
[2] We have opposed alternative approaches to amend the Act to provide for HUD complaints to be referred to administrative law judges for a hearing. This procedure would be costly and cumbersome and most likely not measurably more effective or efficient.

Conclusion

Despite 20 years of legislative, judicial and executive pronouncements to the contrary, unlawful discrimination in housing, credit and public accommodations continues to be an unfortunate fact of life in America today. The Division has responded to this problem in a vigorous, forceful manner by revitalizing the commitment to nondiscrimination in these areas through the creation of the Housing and Civil Enforcement Section in November 1983, which has sought to end such discriminatory practices throughout the country, wherever they have been found to exist. In the short time since its establishment, the new Section has achieved an impressive record covering a broad spectrum of housing, consumer credit and public accommodations enforcement activities. Yet, much remains to be accomplished. To that end, the Division is committed to continuing these enforcement efforts not only to reach the particular offenders targeted in our lawsuits but also to send a strong message that will deter others from engaging in such discriminatory activities.

CIVIL RIGHTS DIVISION

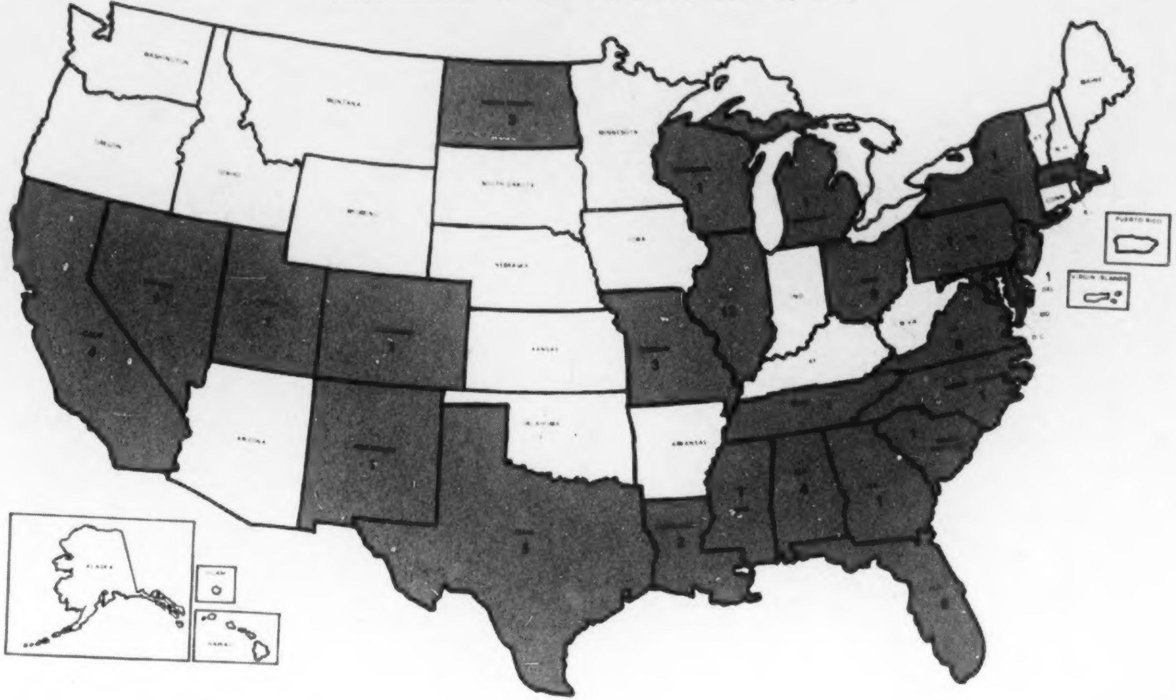
DISTRIBUTION BY STATE OF HOUSING, EQUAL CREDIT AND PUBLIC ACCOMMODATIONS INVESTIGATIONS
NOVEMBER 1, 1983 THROUGH JANUARY 31, 1987


KANSAS
IOWA
MAINE
1
3
5
PUERTO RICO
VIRGIN ISLANDS
44
ALASKA
HAWAII
1
NUMBER OF INVESTIGATIONS (475)
LESS THAN 10
10 – 25
26 – 40
GREATER THAN 40

(V–A)

CIVIL RIGHTS DIVISION

DISTRIBUTION BY STATE OF 73 HOUSING, EQUAL CREDIT
AND PUBLIC ACCOMMODATIONS LAWSUITS
NOVEMBER 1, 1983 TO JANUARY 31, 1987

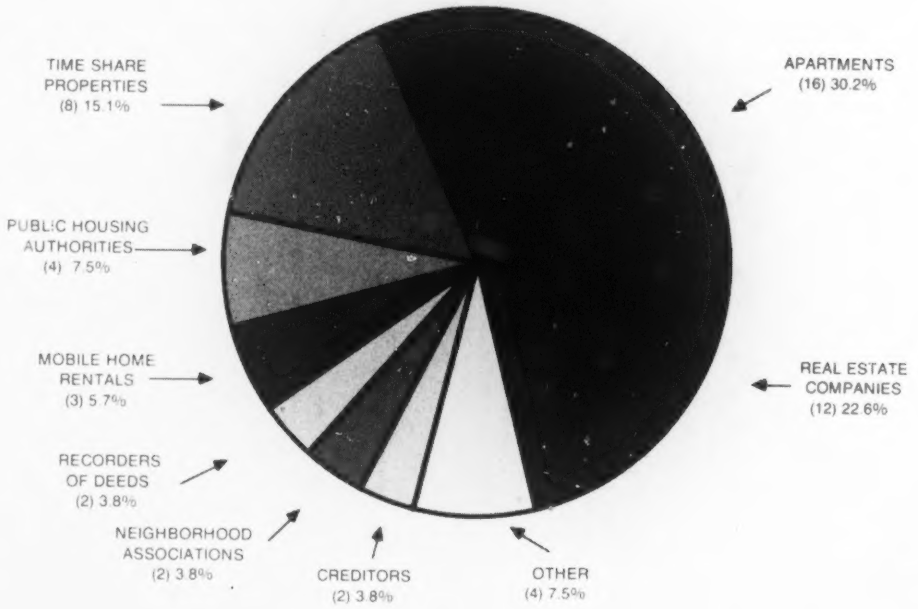

WASHINGTON
OREGON
IDAHO
MONTANA
WYOMING
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
ARIZONA
MINNESOTA
IOWA
ARKANSAS
IND
KY
W.VA
VT
N.H
MAINE
CONN
PUERTO RICO
VIRGIN ISLANDS
ALASKA
GUAM
HAWAII
3
3
12
2
1
4
1
1

(V–B)

CIVIL RIGHTS DIVISION

FAIR HOUSING SUITS BY TYPE OF DEFENDANT

NOVEMBER 1, 1983 THROUGH JANUARY 31, 1987



(V-C)

Rights of Institutionalized Persons

In response to repeated public disclosures of life-threatening, cruel and grossly dehumanizing conditions in our nation's public institutions, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA) in 1980. This statute gives authority to the Attorney General to take action to vindicate the constitutional and federal rights of persons confined to state and local mental health facilities, public nursing homes, prisons, jails and the like.

Since enactment of the statute, the Division has reviewed complaints from over 400 facilities and initiated 86 CRIPA investigations in 32 states and two territories, involving 95 institutions housing some 100,000 persons. Investigated facilities can be found throughout the United States and its territories — from Guam to Massachusetts, and from Oregon to the Virgin Islands (see Appendix VI-A, Facilities Investigated Subject to CRIPA by State and Territory, May 1980 through January 31, 1987). Both large and small facilities have received our attention — from the 7,500-inmate State Prison of Southern Michigan, the world's largest walled prison, to the 150-person jail in Boise, Idaho, the site of the torture death of a juvenile in 1982.

The Attorney General's authority extends to both penal and nonpenal facilities. In institutions where persons are placed pursuant to the criminal process — prisons and jails — the Division's enforcement activities seek to eliminate conditions which expose inmates to cruel and unusual punishment. The focus here is on eliminating rampant violence, severe sanitation problems, serious fire hazards, deliberate indifference to serious medical needs, and unconstitutional overcrowding. In facilities where persons are placed for care and treatment — mental health and mental retardation facilities and nursing homes — our efforts are aimed at obtaining safe conditions, adequate medical care, and insuring sufficient care, treatment and training to avoid undue risks to personal safety and freedom from unreasonable bodily restraint. In sum, the Division seeks those remedies necessary to insure that responsible state and local officials provide the residents of state institutions and inmates in prisons and jails the full measure of their constitutional rights.

Activities and Accomplishments

Pursuant to CRIPA, the Division investigates complaints of widespread and serious abuses, advises responsible state and local officials of any unlawful or unconstitutional conditions found, and seeks to the extent practicable to resolve deficiencies voluntarily without resort to protracted litigation. Absent agreement, a lawsuit is promptly filed in federal court. In each investigation, issues germane to the guarantee of basic constitutional rights have been carefully and thoroughly examined through on-site inspections, review of documents, and interviews of staff and other knowledgeable persons. Lawyers, paralegals and consultants have made some 723 trips outside Washington to facilities under investigation since the enactment of the statute. In FY 1986 alone, 21 new investigations were initiated. In the same fiscal year, 83 consultants toured 36 facilities. The Department spends, on the average, approximately $100,000 annually to retain psychiatrists, psychologists, medical doctors and the like to conduct on-site evaluations of subject facilities. Tens of thousands of documents were reviewed and over 4,000 persons were interviewed last year as part of this effort.

Of the 86 investigations initiated since passage of CRIPA in 1980, 48 have been concluded by consent decree, voluntary remedial action sufficient to satisfy our constitutional concerns, or, in a few cases, a finding of no violation. Five suits are pending against states for their continuing failure to insure constitutional conditions, and 33 investigations are still underway, at one stage or another (see Appendix VI-B, Status of 86 CRIPA Investigations).

Overall, institutional operating budgets of facilities subject to current enforcement activities have increased by almost $100 million, or nearly 33%.[1] Over $123 million have been spent on capital improvements in 16 facilities. In 12 facilities, 1,715 new staff have been added in all categories. Over 1,900 residents of eight mental health and mental retardation institutions have been placed in alternative programs and facilities as a result of state efforts to reduce the institutional census and to place residents in more appropriate community settings. Drug and restraint policies have been drastically modified. Abuse and violence have been substantially reduced.

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[1] Unless otherwise specified, statistical information is based upon matters settled by outstanding consent decrees entered since 1984 and matters otherwise concluded since 1985. The monetary figures specified in this paragraph are derived from information obtained from 16 facilities.

Mental Health and Mental Retardation Facilities

As late as the early 1980s, Southbury Training School, Southbury, Connecticut, was a "training" school in name only. It was not uncommon for large numbers of residents to be left unsupervised; injuries and accidents were commonplace; bodily restraints were routinely used and medical care was often wanting. Since the commencement of the Division's investigation of this mental retardation facility (which is now under a consent decree), the operating budget of Southbury has increased by $11 million, permitting at last responsible officials to take steps to remedy life-threatening deficiencies. An additional $4.5 million increase is projected for the next fiscal year. Some $15 million will be spent next year on capital improvements, including major building renovations to eliminate fire hazards. No longer will nonambulatory residents be threatened with loss of life in case of fire.

Southbury is also committed to improving care, to training residents and to eliminating injurious behaviors in residents who harm themselves and others. Southbury's staffing complement has been increased by 593 persons, including doctors, nurses and psychologists. In the near future, an additional 224 persons will supplement the staff. Of the 1,100 residents, only 176 (or about 16%) are presently being administered behavior-modifying medications. While further improvement is desirable, Southbury's staff is now sufficient to afford proper supervision of residents; professionals have begun to implement training programs; use of drugs has been reduced; buildings will be made safer; medical care is improved — all to the constitutional benefit of the mentally retarded residents of Southbury.

Rosewood Center, Owings Mills, Maryland, notorious in professional circles for its inhumane conditions and warehousing of the mentally retarded, is the subject of a 1984 comprehensive consent decree. It was far too common at the outset of our investigation to find residents naked, lying on the floor in a fetal position. All residents are now properly clothed and Rosewood has taken one giant step closer to the 20th century. Its budget has expanded from $26 million in 1981 to a present figure of $39 million, a 50% increase. During the same period, $13 million have been expended on capital improvements, including building renovations to insure fire safety and some degree of privacy for residents. Most dramatically, Rosewood has reduced its population by 600 residents — residents placed voluntarily by state officials in alternative programs and facilities more appropriate for their care and training.

Many mental health and mental retardation facilities, when faced with chronic staff shortages, have overused physical restraints and misused powerful tranquilizing medications. Residents in a number of facilities have been tied to chairs, placed in straight jackets, or administered heavy doses of drugs to put them into a dull, lethargic stupor. Increases in professional and other staff have gone a long way toward eliminating these dangerous and dehumanizing practices. In Southbury, the average number of hours that all residents spend in physical restraints per month has been reduced from 523 to 47. At Enid State School, in Oklahoma, the number of residents being administered tranquilizing medication has been reduced from 244 to 93, and the dosage is now carefully controlled. In Pauls Valley State School, also in Oklahoma, officials eliminated the use of physical restraints entirely, unlocked all living areas, and substantially reduced the use of tranquilizing medications. And, at Michigan's Ypsilanti State Hospital, the subject of a comprehensive consent decree, the use of seclusion and restraints has already been reduced by 54%, and a further reduction of these practices is anticipated.

Other mental health and mental retardation facilities have likewise benefitted from increased operating budgets and the addition of professional and direct care staff. The South Carolina State Hospital operating budget has been significantly increased by $6 million, with an additional increase of $2 million projected for next fiscal year. Since 1983, $1.8 million have been expended on capital improvements. The average sum expended per patient at the hospital has increased from $26,000 to $55,000 per year. For the first time, no private damage actions filed by patients are pending against South Carolina State Hospital.

The budget of Pauls Valley State School has increased from $13 million to nearly $16.5 million per year, a 26% increase, all of which has been devoted to improving patient care. Staffing has also been increased at Pauls Valley. One hundred twelve professional staff and 69 direct care staff have been employed, while the number of residents has been reduced by 139. Dramatic staffing increases have also occurred at the Logansport State Hospital, Logansport, Indiana, and Central State Hospital at Indianapolis, both subject to a consent decree. One hundred one new staff have been hired since the decree was entered in 1984. Significantly, these staff increases include a number of vitally needed psychiatrists. Moreover, Indiana state officials have agreed to employ the consent decree staffing ratios at all other Indiana mental health facilities, resulting in increased staffing — and improved patient care — at these facilities as well.

Nursing Homes

Hardly a day goes by without news of a tragic incident in one of numerous nursing homes across the United States. Bedridden patients are neglected, physical abuse occurs, and medical attention is inadequate. All too often our elderly are simply forgotten. In a large number of incidents, these facilities are privately owned and therefore not subject to the enforcement authority of the federal government. Elderly persons residing in nursing homes administered by state and county officials, however, do fall within CRIPA's statutory mandate.

Following the commencement of an investigation by the Division at the Edgemoor Geriatric Hospital, Santee, California, dramatic staffing increases have been implemented. The patients at this nursing home have benefitted from the addition of 125 professional staff, including 32 registered nurses and 63 nursing assistants. These employees represent a 40% increase from the previous staff complement and a new county cost of $3.1 million. As a result of improvements in care, a significant number of formerly bedridden patients are now walking — most of whom had not walked during this decade. Finally, the facility is now accredited by the Joint Commission for the Accreditation of Hospitals, another reflection of improved patient services.

Prisons and Jails

Rocked by prison riots in the early 1980s, the Michigan prison system was plagued with constitutional violations. Since the entry of a consent decree in 1984, the state has already made substantial progress in correcting these serious abuses. Significantly, Michigan has already spent over $50 million to eliminate constitutional violations in its three largest prisons. Pursuant to a comprehensive remedial plan, state officials have built a 94-bed hospital to meet the serious medical needs of the prison population. Also improved are services for the seriously mentally ill. Disturbed inmates are no longer strapped to bare metal bed frames or left naked in their cells. In response to enforcement efforts, sanitation has likewise been improved; cellblocks are no longer littered with trash and human feces.

Capital expenditures to eliminate unconstitutional violations in other penal facilities have been substantial. The Bedford County, Tennessee, Board of Supervisors has voted to spend $1.35 million to construct a new jail. The present jail, built in 1867, was determined to be a fire trap. When our investigation commenced in 1984, inmates were locked in their cells, and left unattended. Any fire would have resulted in extensive loss of life. With a new facility planned and adequate interim remedies in place, jail inmates need no longer fear for their lives.

In Talladega County, Alabama, where the jail has been the subject of a consent decree, the operating budget was increased from $290,000 to $396,000 in order to implement necessary improvements. The Newark, New Jersey, detention facility has benefitted by consent decree requirements of $200,000 worth of improvements. Finally, in Hinds County, Mississippi, local officials now spend $250 per day per person to house mentally ill prisoners awaiting transfer to the state mental hospital rather than maintaining them in the county jail, which was ill-equipped to handle their mental conditions.

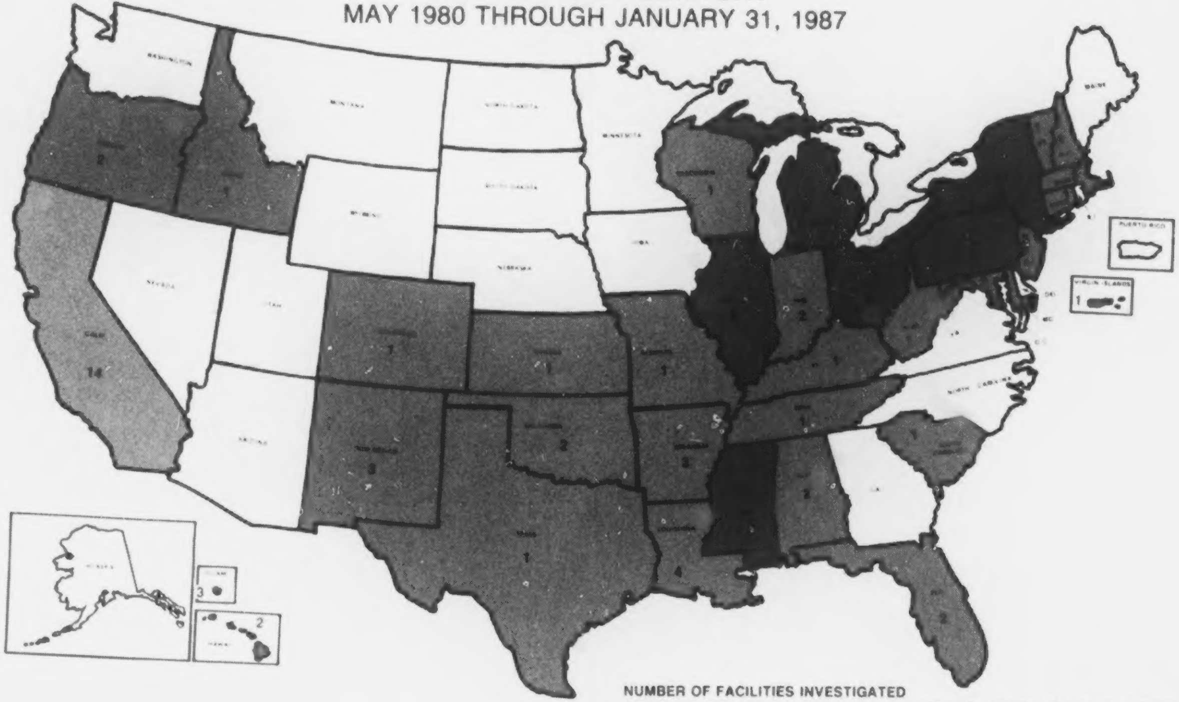
Conclusion

Constitutional conditions in public institutions have been or are being achieved by the Division's enforcement activities pursuant to CRIPA. Those matters resolved since 1984 have produced additional new expenditures of at least $105 million in furtherance of the achievement of constitutional conditions of confinement in penal facilities. The inmates of Michigan's prisons and other detention facilities and jails we have investigated are no longer subject to unreasonable risks to their lives. Overall operating budgets of mental health and mental retardation facilities we have investigated have increased by 78 percent. The residents of Southbury, Rosewood, Pauls Valley, Edgemoor and other facilities now have a chance to live better lives. In addition, increased attention is being given to alternatives to institutionalization, and many facilities under CRIPA consent decrees are looking at alternative community living options as a means of improving staff-to-resident ratios in the larger facilities.

While much remains to be done, we can take considerable satisfaction in our efforts to date — and those of the state and local governments — which have resulted in dramatic improvements in the living conditions and health care services for so many institutionalized persons.

CIVIL RIGHTS DIVISION

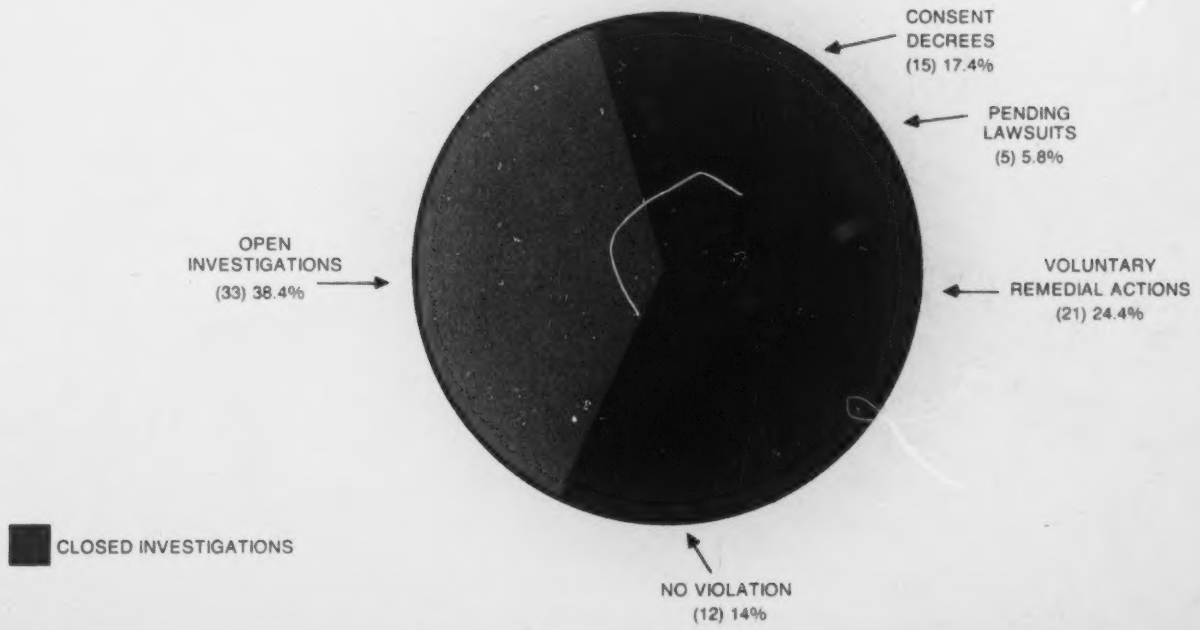
FACILITIES INVESTIGATED SUBJECT TO CRIPA
BY STATE AND TERRITORY
MAY 1980 THROUGH JANUARY 31, 1987


2
1
14
1
3
1
2
1
1
2
1
1
4
1
2
1
2
1
PUERTO RICO
VIRGIN ISLANDS
1
3
2
NORTH CAROLINA
VA
GA
DEL
MD
D.C.

NUMBER OF FACILITIES INVESTIGATED
PURSUANT TO THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (95)

- ▨ 1 – 4
- ■ 5 – 10
- □ GREATER THAN 10

CIVIL RIGHTS DIVISION
STATUS OF 86 INVESTIGATIONS CONDUCTED UNDER THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT MAY 1980 THROUGH JANUARY 31, 1987



(VI–B)

VII. VOTING

Voting Rights

Credited as the most effective civil rights legislation ever enacted by Congress, the Voting Rights Act of 1965 was aimed at overcoming the deficiencies of previous attempts to enforce the guarantees of the Fifteenth Amendment. In addition to the nationwide prohibition against discrimination in the electoral process contained in Section 2, the Act also establishes a "preclearance" requirement in Section 5. This preclearance procedure was designed to ensure that "covered jurisdictions"[1] would not be able to change any "standard, practice or procedure affecting voting" without subjecting the proposed change to federal scrutiny either by the United States District Court for the District of Columbia or the Attorney General.[2] Additionally, to ensure that all qualified persons are permitted to vote and to have those votes counted without regard to race once they are on the voter rolls, Section 8 of the Act authorizes the assignment of federal observers to monitor the election day activities within polling places in designated counties satisfying certain criteria.

The Civil Rights Division was delegated the responsibility for the enforcement of the Voting Rights Act as well as other federal statutes which pertain to nondiscrimination in the exercise of voting rights, including the Overseas Citizens Voting Rights Act and the voting rights provisions of the Civil Rights Acts of 1957, 1960 and 1964.

In discharging its enforcement responsibilities under the Voting Rights Act, the Division performs three basic functions: (1) litigation activities, including litigation brought by the United States against jurisdictions for violations of any of the above federal laws, along with the defense of declaratory judgment actions brought by jurisdictions either to obtain judicial preclearance of a proposed change affecting voting or to "bail out" from coverage under the Act's special provisions; (2) analysis and review, pursuant to Section 5, of voting changes submitted to the Attorney General for administrative preclearance; and (3) assignment of federal examiners and observers of elections.

Discrimination in the Electoral Process

The early and logical focus of enforcement was on the registration process. The day following the signing of the Act, federal examiners were dispatched to numerous counties in the covered states to list potential voters. As a result of these activities during the first seventeen months of the Act (August 1965 to December 1967), black voter registration in the covered states increased by over 700,000 persons.

Following the increase in black voter registration that flowed from the initial enforcement efforts, jurisdictions began to employ discriminatory techniques more sophisticated than the outright denial to black persons of the right to register to vote.[3] Accordingly, the emphasis in enforcement shifted from registration practices to other areas. Foremost were challenges to the electoral structure. Beginning in the early 1970s, multi-member districts, at-large election systems or specified features of the electoral structure such as numbered posts, full-slate requirements or majority vote provisions, were challenged as being dilutive of the minority community's voting strength. These actions, in conjunction with challenges to redistricting plans alleged to be racially discriminatory, sought to create a meaningful opportunity to vote for those persons who had been newly enfranchised by virtue of other provisions of the Act. These efforts have continued to the present day and the impact of the Voting Rights Act is perhaps more evident in 1987 than at any time since its passage.

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[1] "Covered jurisdictions" are designated under Section 4 of the Act. Currently, nine states in their entirety and portions of seven others are considered "covered jurisdictions" under the special provisions of the Act. Jurisdictions may initiate a lawsuit to "bailout" or terminate coverage under the special provisions. The United States participated in seven such lawsuits between 1982 and 1984.

[2] Sections 6 and 7 of the Act also establish, for counties so designated by the Attorney General, a procedure allowing persons to have their qualifications for registering to vote under state law reviewed by a federal examiner. If qualified, the applicant's name is placed on a list of eligible voters which is forwarded to the appropriate state or local official who must place those names on the official voter rolls.

[3] Although the need for federal examiners has largely dissipated, the potential for discrimination in the registration process remains, and even since 1981 we have employed this law enforcement mechanism for the protection of minority voting rights. For example, examiners were sent to six locations in Mississippi in 1983 where, in a three-day period, over 1,100 persons were listed. In addition, over half of the 21 objections interposed since 1965 by the Attorney General pursuant to Section 5 of the Act to proposed changes in procedures for either voter registration, reregistration or purging of voters have been interposed after 1981 and, in one Alabama county, the United States had to bring suit in 1982 to prevent a discriminatory reregistration.

Enforcement of the Voting Rights Act

One of the Division's most active efforts continues to be our enforcement of the Voting Rights Act. Since January 1981, the Division has participated in a total of 96 cases (44 as plaintiff, 16 as plaintiff-intervenor, 12 as *amicus curiae*, and 24 as defendant) (see Appendix VII-A, Voting Rights Litigation by Period and by State). Contemporaneous with this litigation effort has been an unparalleled level of review under Section 5. From January 1981 through September 30, 1986, the Division reviewed over 82,000 changes (see Appendix VII-B, Section 5 Voting Changes Submitted through September 30, 1986; and Appendix VII-C, Changes Submitted (82,298) by State, January 1, 1981 through September 30, 1986). Objections have been interposed to 593 changes during this same time period (see Appendix VII-D, Voting Changes to Which Objections Have Been Interposed by Type, January 1, 1981 through September 30, 1986; and Appendix VII-E, Voting Changes to Which Objections Have Been Interposed by State, January 1, 1981 through September 30, 1986). In addition, the Division recently promulgated revisions to the administrative procedures for Section 5 which incorporate recent judicial decisions involving the Voting Rights Act and the 1982 extension of Section 5. Finally, since January 1981, we have deployed 4,406 federal observers to attend elections to document any instances of discrimination in the voting process.

At all levels of government, from city council to United States Congress, effective enforcement of the Voting Rights Act has provided an opportunity for members of protected minority groups to participate on a basis equal to other members of the electorate in the electoral process and to have an equal opportunity to elect candidates of their choice to office.

Municipal Elections

Foremost among the litigation brought to remedy Section 2 violations at the municipal level was the Division's participation in the successful challenge to the at-large system in Mobile, Alabama. Further, a keynote feature of recent activity under the Voting Rights Act has been its expansion outside the South. We successfully sued the city of Cambridge, Maryland, a city not covered by the Act's special provisions, and obtained a change from at-large elections to elections by district as well as a special election that should assure fully to blacks an equal opportunity to participate in the electoral process.

Other significant actions affecting municipal elections involved Section 2 challenges to redistricting plans for the city councils in Chicago and Los Angeles, the nation's second and third most populous cities. These actions culminated efforts of the Division to protect the voting rights of affected minorities in the three largest cities in the nation, since earlier, in 1981, meaningful changes in New York City's districting process had been obtained because of objections interposed by the Attorney General under Section 5.

In the litigation challenging the Chicago redistricting, ward district lines were required to be redrawn so as to ensure equal access to the franchise for both black residents of the city and persons of Spanish origin. The successful resolution of the Los Angeles litigation remedied the Section 2 violation we claimed to have resulted from the treatment afforded Hispanic voters under the 1982 redistricting and, through a redrawing of certain district lines, assured equal voting opportunities to persons of Spanish origin living in that city.

In addition to court-ordered changes, the last three years have seen a virtual explosion in the number of jurisdictions, mostly cities and school districts, abandoning the at-large method of electing members of their governing bodies. This, no doubt, is attributable in significant part to the 1982 amendment of Section 2.[4] In the three years prior to the amendment, fewer than 600 jurisdictions in the covered states changed their method of election. In the three years following the amendment, the number increased to 1,354.

Since corporate boundaries determine who may and who may not vote in municipal elections, a municipality's decision regarding annexation of land has a direct effect on the voting rights of individuals both inside and outside the city's boundaries. In this unique but important area, we have challenged both individual annexations as well as a municipality's annexation policy as violative of the Voting Rights Act. The town of Indian Head, Maryland, for almost two decades, had avoided annexing several areas of land on which significant concentrations of black persons resided, although areas containing white residents were readily admitted into the city. After we initiated litigation under Section 2 to remedy the situation, the city agreed to adopt a nondiscriminatory annexation policy which resulted in the two "black population" areas promptly being brought into the city.

The annexation policy of the city of Pleasant Grove, Alabama, came under our scrutiny in a different context. There the city, which is all-white in population, had sought Section 5 preclearance of its decision to annex additional areas of white population. A review of the information available to us indicated that the annexations were in furtherance of a policy which, for fifteen years, had successfully excluded black persons from any participation in the city. Following an objection to the annexations by the Attorney General, we successfully opposed judicial preclearance of the annexations in question from the United States District Court for the District of Columbia; the Supreme Court recently affirmed the district court's denial of preclearance.

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[4] The amendment to Section 2, which codified the "results test" from *White* v. *Regester*, 412 U.S. 755 (1973), prompted many challenges to the revised provision as being an unconstitutional exercise of congressional power. The United States intervened and successfully defended the provision's constitutionality in ten such actions.

In 1983, the city of Prior Lake, Minnesota, sought to prevent Native Americans residing on reservation land within the city limits from voting in municipal elections by deleting the tribal lands from the city's voting precincts. In conjunction with the Shakopee Mdewakanton tribe, the United States successfully challenged that action. The lawsuit also resolved a long-standing dispute regarding the delivery of municipal services to the reservation on a basis different from the rest of the city.

School Boards and Boards of Education

Likewise, our enforcement of the Voting Rights Act has had a similar impact on school boards and boards of education. In a number of jurisdictions, we have sued simultaneously the local governing body and the school board. In Dallas and Marengo Counties, Alabama, our Section 2 lawsuits have involved both the county commission and the county school board.

In a number of our enforcement efforts, we have been able to coordinate the complimentary features of the Act so as to assure full relief in a given situation. One example was the April 1984 election of members of the Board of Trustees of the Wilmer-Hutchins Independent School District in Dallas County, Texas. Although the school district had a majority black population, four of the seven board members, who were elected on an at-large basis, were white. Two positions, then currently occupied by whites, were to be contested at the next election; each white incumbent had a black challenger. Prior to the election, the board, on a racially-divided vote, chose to close one of the two polling places located in black population areas and to establish two new polling places in areas where the population was white. After we succeeded in obtaining a submission of the proposed changes by the school district for the required Section 5 review, an objection to the new polling places was interposed. Since every person that the board of trustees had appointed to serve as an election official was white and because the mere bar to the use of the new polling places did not appear sufficient to restore to black voters the degree of confidence in the electoral process necessary to bring them to the polls in significant numbers, we utilized the provisions of Sections 6 and 8 of the Act, under which the Attorney General certified Dallas County, Texas, for use of a federal examiner so that federal observers could be assigned to the district's polling places to monitor the election. As a result, there was no significant drop-off in the number of members of the minority community who came to the polls to vote.

County Government

As with municipalities and school boards, our enforcement of the Act has had substantial impact on the character of county government. For example, in Mississippi alone Section 5 objections were interposed to 22 county redistrictings which were undertaken following the 1980 Census. Twenty of these counties then developed alternative plans which subsequently obtained preclearance. At the time those plans were developed and submitted to the Attorney General only nine black persons served as members of the boards of supervisors in these 20 counties. In the elections conducted following the adoption of these new plans, the number of black persons serving as supervisors increased to 19.

Black representation on county governing bodies also increased as a result of our litigation efforts. In Marengo County, Alabama, for example, where we have had litigation pending in one phase or another since 1978 challenging the at-large method of electing members of the county commission, we finally succeeded in getting the issues resolved by the court, which found the at-large method to be violative of Section 2 and ordered that elections be conducted by single-member districts. As a result, black persons were elected to serve on the county commission for the first time.

On another front, Sumter County, South Carolina, attempted to obtain judicial Section 5 preclearance of a change in the method of selecting the members of its county council. Previously, the council had been appointed by the state legislature; no black had served as a member of the council. The county sought to implement an at-large method of election which the evidence indicated would continue the exclusion of blacks from the county's political process. After we successfully opposed preclearance by the United States District Court for the District of Columbia, the county adopted a single-member district election system. As a result, black voters have been able to elect three of the seven members of the Sumter County Council.

Nor have our enforcement activities been confined to counties in the covered states. We also challenged the at-large method of election by which Dorchester County, Maryland, elected its county commission. As a result of this successful litigation, residents of Dorchester County recently elected the first black person to serve on a county commission on Maryland's Eastern Shore.

The scope of the Voting Rights Act's Section 2 protections was further defined in a lawsuit we brought against

Conecuh County, Alabama. Alabama election law provides that county officials appoint persons to act as poll officials. Of the 150 persons appointed to serve as an official in each election held in Conecuh County, Alabama, there had never been more than 15 to 20 black persons named. We successfully challenged the county's practice of appointing only a token number of black persons to serve as poll officials as violative of Section 2. As a result of the lawsuit, a significantly larger number of black residents of the county now serve as election officials.

State Government

Enforcement activity under Section 5 against state legislative redistrictings also has been brisk. In six of the seven covered states, the Attorney General has objected to the redistricting of at least one of the two houses of the state legislatures. Following two consecutive objections to Alabama legislative redistrictings, Section 5 preclearance eventually was obtained for a plan which was hailed by all as a major advancement of minority voting rights in Alabama. Elections under that plan resulted in 24 black persons being elected to the legislature where, under the plan previously in effect, that number had been 18. In all, the Attorney General interposed objections to redistrictings for 16 state legislative bodies, and the results for each were equally dramatic. Prior to interposing objections, 120 of the members of those 16 bodies were minorities; in the elections that followed, under redistricting plans that had been precleared following our objections, the number increased to 170.

In a similar context, the State of South Carolina chose to seek judicial preclearance of its state senate redistricting rather than submit it to the Attorney General for administrative review. We opposed the redistricting in court on the ground that it was not free of discriminatory purpose or effect. The matter was resolved prior to trial when the state adopted an alternative plan to which the Attorney General had no objection. The elections that subsequently took place under South Carolina's precleared plan produced an increase in the number of elected black state senators. Once again, we helped to ensure the full enforcement of the Voting Rights Act's protections through the assignment of federal observers to monitor the elections held under the precleared plan.

Federal Elections

Our Voting Rights Act enforcement activities have had a significant impact at the congressional level as well. Initially proposed congressional redistricting plans for Georgia, New York, Mississippi and Texas were never implemented as a result of objections interposed by the Attorney General. With the seating of the 100th Congress, minorities have been elected to seats in subsequently precleared districtings for each congressional district in those four states that was the focus of the Attorney General's objections.

In 1982, the configuration of the Mississippi congressional districts received its first substantive Section 5 review even though that basic configuration was first advanced by the state in 1966. From 1890 to 1962 the state's congressional districts were drawn on a north-south axis thereby creating a district in the heavily black Mississippi Delta area. In 1966, a federal court held that the new configuration, which fragmented the Delta into three districts, was constitutional; the plan was never reviewed under Section 5. When a similar plan, developed following the 1970 Census, was submitted for Section 5 scrutiny, the Attorney General erroneously deferred to the decision of the local district court and did not interpose an objection although the discriminatory effect of the altered configuration was noted. The 1981 redistricting attempted to follow the same configuration. This time, however, we subjected the plan to the appropriate scrutiny under Section 5 and an objection was interposed. The resulting alternative plan created a district which gives black persons a realistic opportunity to participate in the electoral process on a basis equal to other members of the electorate and, for the first time since Reconstruction, a black person has now been elected as a member of the Mississippi congressional delegation.

Overseas Citizens' Voting Rights

The voting rights we have sought to protect have not been limited to those safeguarded by the Voting Rights Act. Another group of voters who traditionally have been disenfranchised are those citizens who, at the time of the election, reside outside of the country. Pursuant to the Overseas Citizens Voting Rights Act (OCVRA), which allows such persons to cast ballots in federal elections in the place where they last resided before leaving this country, states are required to provide absentee ballots early enough for voters to execute and return their ballot in time to be counted. Of the 11 lawsuits brought under the OCVRA since it was enacted in 1975, nine were brought since 1981 and have resulted in a significant number of persons being able to cast an effective ballot where otherwise they could not have done so.

American Indians' Voting Rights

In New Mexico, American Indians have long been victims of voting discrimination. As a result, their participation in the political process has been remarkably low. When the state legislature redistricted in 1982 based on the number of votes cast in 1980, rather than on population, Indians were severely undercounted. The Division successfully challenged the method of redistricting as an intentional effort to infringe on the voting rights of Indians. The court ordered the state to redistrict based on population statistics, but the new plan devised in response to that order gerrymandered district boundaries and unnecessarily and intentionally split concentrations of Indians. The district court held that the plan diluted Indian voting strength and ordered a second plan, which provided fairly drawn legislative districts. As a result, Indian representation in the New Mexico House has increased from one to four seats.

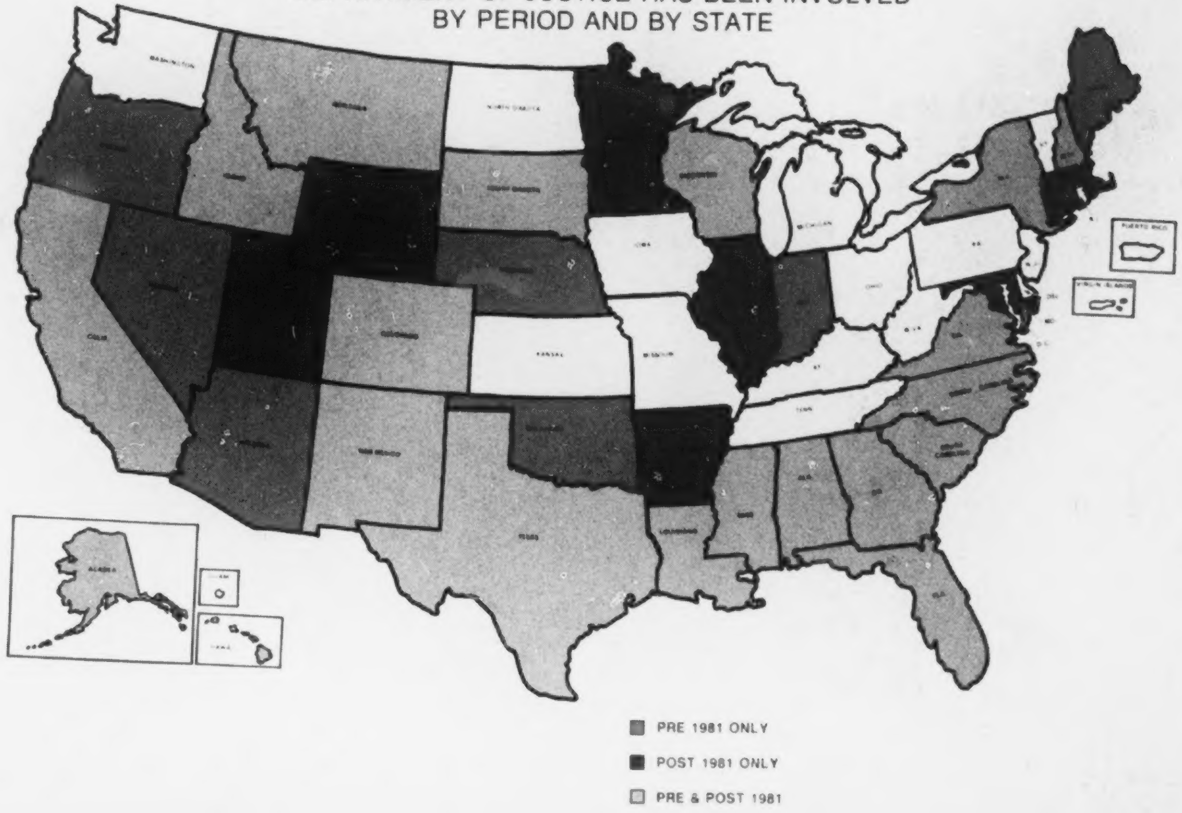
Based on our work in New Mexico, we were able to identify several further violations of Indian voting rights. Two additional suits were filed in 1985 and several more matters remain under active investigation. Our continuing efforts to address Indian voting problems in New Mexico (and elsewhere) have had a very positive impact on Indian political participation. In addition to the several new Indian legislators, the November 1986 elections brought new Indian officials to local governments as well.

Conclusion

Overall, the effectiveness of our enforcement of the Voting Rights Act is reflected in the opening of the electoral process to minorities. Not only has minority voter registration increased but concomitantly there has been a significant increase in the number of minority elected officials during the 1980s. According to the National Roster of Black Elected Officials published by the Joint Center for Political Studies, there were 4,912 black elected officials in 1980; in 1986 the number was 6,424 or a 30% increase. While comparable compilations are not available for the other protected minorities, all indications are that there have been similar successes.

CIVIL RIGHTS DIVISION

VOTING RIGHTS LITIGATION IN WHICH THE DEPARTMENT OF JUSTICE HAS BEEN INVOLVED BY PERIOD AND BY STATE



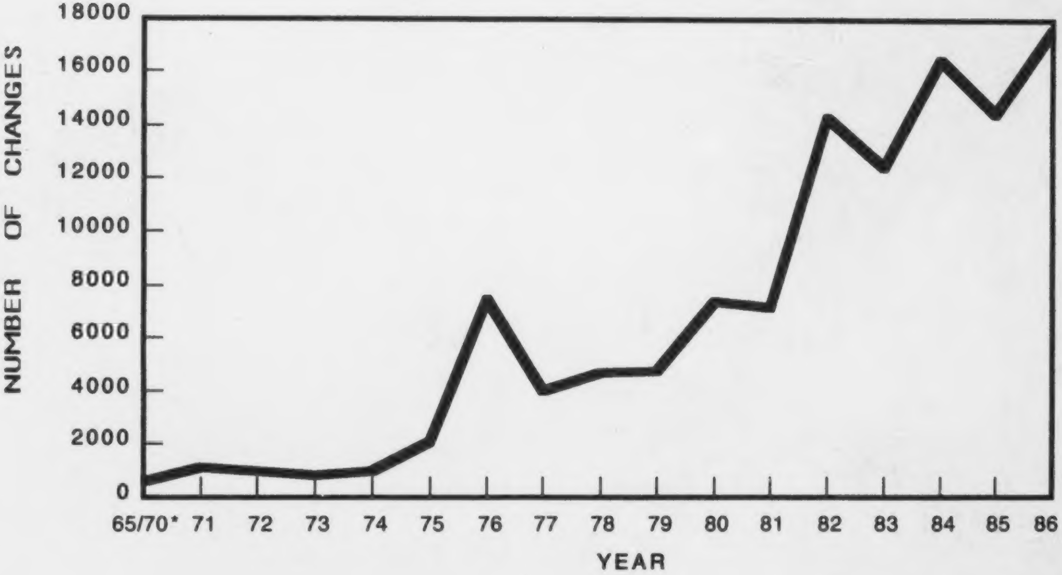
▨ PRE 1981 ONLY

■ POST 1981 ONLY

□ PRE & POST 1981

(VII–A)

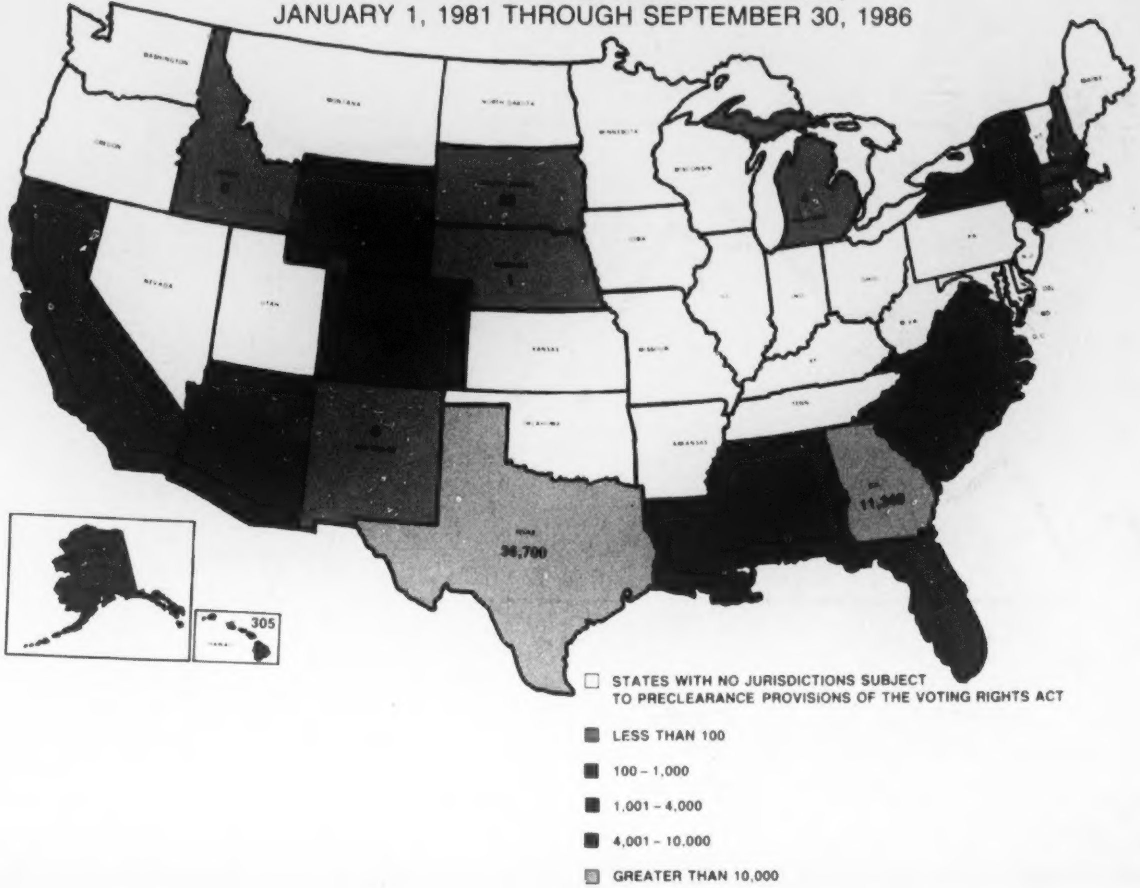
CIVIL RIGHTS DIVISION
SECTION 5 VOTING CHANGES SUBMITTED
THROUGH SEPTEMBER 30, 1986



*DURING THE SIX-YEAR PERIOD, 1965 – 1970, A TOTAL OF 578 VOTING CHANGES WERE REVIEWED.

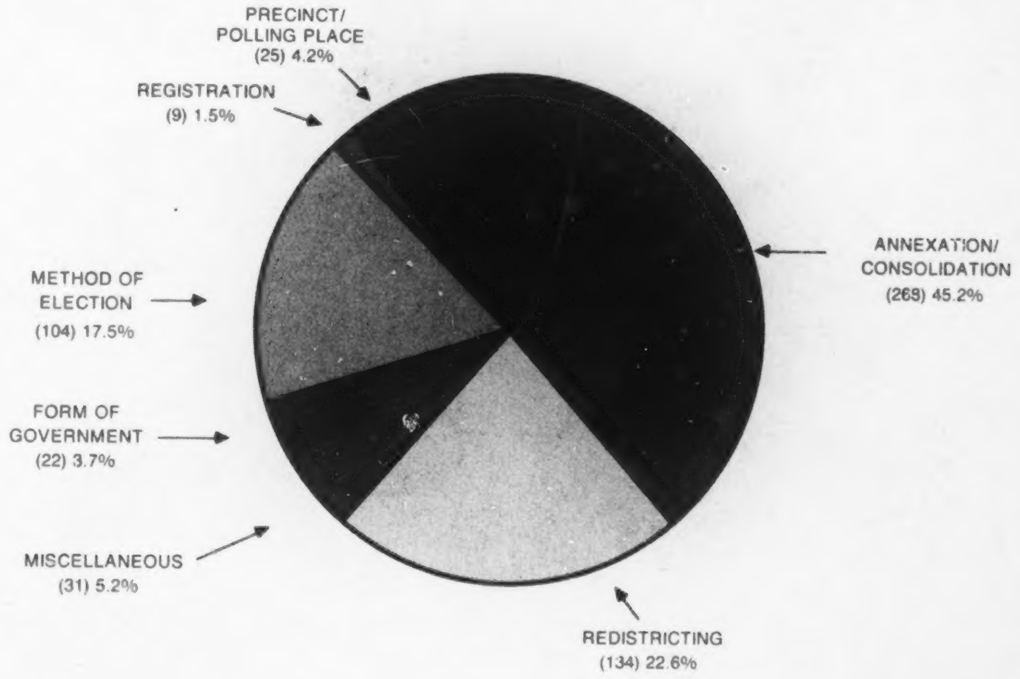
(VII–B)

CIVIL RIGHTS DIVISION
CHANGES SUBMITTED (82,298) UNDER PROVISIONS OF THE VOTING RIGHTS ACT BY STATE, JANUARY 1, 1981 THROUGH SEPTEMBER 30, 1986


36,700
305
☐ STATES WITH NO JURISDICTIONS SUBJECT TO PRECLEARANCE PROVISIONS OF THE VOTING RIGHTS ACT
■ LESS THAN 100
■ 100 – 1,000
■ 1,001 – 4,000
■ 4,001 – 10,000
▨ GREATER THAN 10,000

CIVIL RIGHTS DIVISION

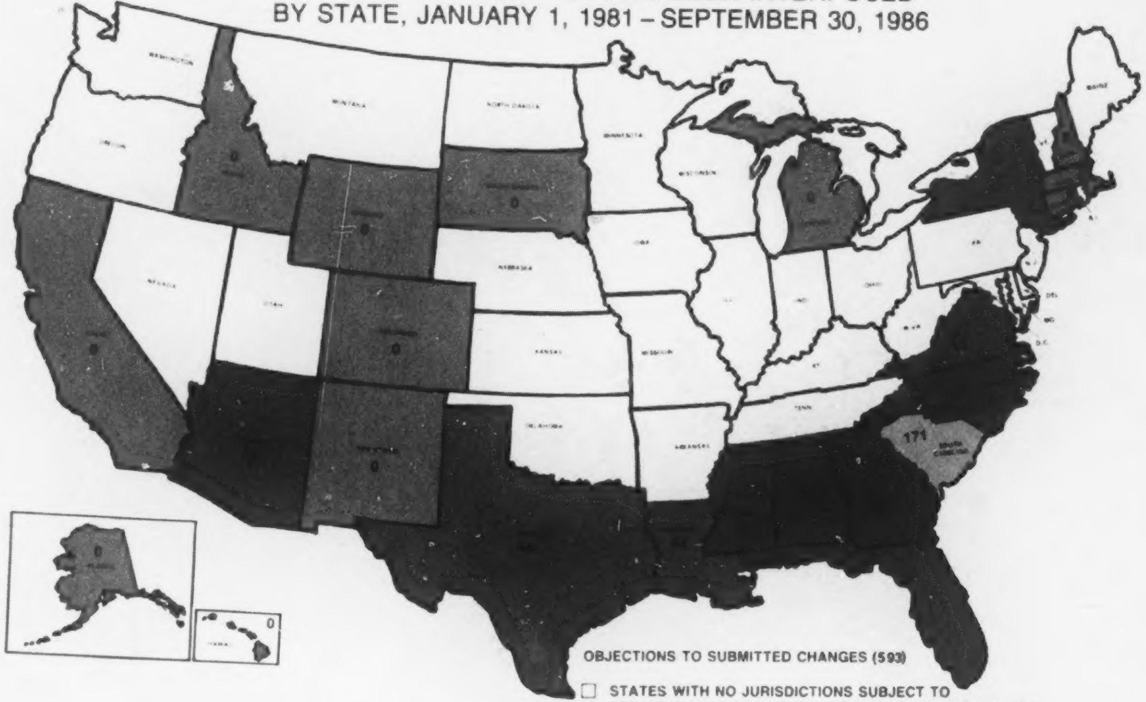
NUMBER OF VOTING CHANGES SUBMITTED UNDER SECTION 5 OF THE VOTING RIGHTS ACT TO WHICH OBJECTIONS HAVE BEEN INTERPOSED BY TYPE, JANUARY 1, 1981 THROUGH SEPTEMBER 30, 1986



(VII–D)

CIVIL RIGHTS DIVISION

NUMBER OF VOTING CHANGES
TO WHICH OBJECTIONS HAVE BEEN INTERPOSED
BY STATE, JANUARY 1, 1981 – SEPTEMBER 30, 1986


WASHINGTON
OREGON
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
0
MINNESOTA
WISCONSIN
NEBRASKA
KANSAS
OKLAHOMA
UTAH
NEVADA
0
0
0
0
0
IOWA
MISSOURI
ARKANSAS
ILL
IND
OHIO
KY
TENN
PA
W.VA
DEL
MD
D.C.
N.J.
R.I.
VT
MAINE
171
SOUTH CAROLINA
0
HAWAII
0

OBJECTIONS TO SUBMITTED CHANGES (593)

☐ STATES WITH NO JURISDICTIONS SUBJECT TO PRECLEARANCE PROVISIONS OF THE VOTING RIGHTS ACT

■ NO OBJECTIONS

■ 1 – 50 OBJECTIONS

■ 51 – 100 OBJECTIONS

■ GREATER THAN 100 OBJECTIONS

Civil Rights Appeals

Appellate advocacy in the United States Supreme Court and the United States Courts of Appeals is among the most important tasks facing the Civil Rights Division. The Division has primary responsibility for handling civil rights cases in the Supreme Court and the courts of appeals. Most of the Division's appeals are from district court judgments in cases originally handled by Division trial sections. An increasing number of cases, however, involve our participation as *amicus curiae* in cases which have the potential for affecting Division enforcement responsibilities.

Overall, since January 20, 1981, the Division has filed 182 briefs and substantive papers in the Supreme Court, and 290 in the courts of appeals. To the extent such data provide a measure of appellate activity, they reflect recent increases. In FY 1985, we filed 68 such briefs or substantive papers: 17 in the Supreme Court and 51 in the courts of appeals. The comparable figure for FY 1986 is 79: 35 in the Supreme Court and 44 in the courts of appeals. In roughly the first quarter of FY 1987, we filed 26 briefs or substantive papers, five in the Supreme Court and 21 in the courts of appeals. We have been fully or partially successful in 80% of all Supreme Court cases (see Appendix VIII-A, Supreme Court Merits Decisions, January 20, 1981 through September 30, 1986) and in 81% of all courts of appeals cases (see Appendix VIII-B, Courts of Appeals Merits Decisions, January 20, 1981 through September 30, 1986).

Appeals in Which the United States is a Party

The bulk of the Civil Rights Division's appellate activities necessarily involves the defense of judgments obtained by its trial sections and, where appropriate and authorized, the appeal of adverse judgments entered in cases the trial sections have litigated. A noteworthy case, typical of the Division's appellate activity in the Supreme Court, is *Bazemore* v. *Friday*, 54 U.S.L.W. 4972 (U.S. July 1, 1986). Among other things, this case involved the State's appeal of the Division's successful challenge to the North Carolina Extension Service's continuation of a racially discriminatory pay policy after the effective date of Title VII. The extension service, relying on the fact that Title VII is not a retroactive statute, argued that there was no new violation after enactment of the Act. The Division argued in both the Court of Appeals for the Fourth Circuit and the Supreme Court that there is a post-Act violation every time the extension service issues racially discriminatory pay. The Supreme Court agreed with our contention.

Similarly, in *City of Pleasant Grove* v. *United States*, 55 U.S.L.W. 4133 (U.S. Jan. 21, 1987), the Division argued as appellee that the all-white Alabama city of Pleasant Grove had failed to demonstrate that it was free of a racial purpose under Section 5 of the Voting Rights Act of 1965 in its effort to annex two adjacent tracts of land — one vacant and slated for white development, the other populated solely by about 20 whites. The evidence showed that the city had pursued a policy of annexing only white areas while refusing to annex similarly situated black areas. The Supreme Court affirmed the refusal of the three-judge district court to grant the city a declaratory judgment under Section 5 permitting the annexation. In the process, the Supreme Court reaffirmed that Section 5 prohibits changes in voting practices, including land annexations, that have a racial purpose, even if such changes do not have a retrogressive effect on voting rights.

The number of appellate cases handled in which the United States is a party depends in part on a number of factors. For example, with respect to the courts of appeals, such a figure would depend on how many cases are fully litigated (as opposed to settled) in the trial court, whether a party that loses to the United States in the trial court decides to appeal and — in cases where the United States is unsuccessful in the trial court — whether an appeal is appropriate and approved. Furthermore, in appellate litigation, it is hazardous to rely unduly on statistical evaluations of litigative success. While a court of appeals may adopt a result urged by the litigant, it frequently will do so without embracing all of its arguments. Conversely, a court may fully embrace one's legal analysis on most issues while arriving at a contrary result. And, of course, some cases are more difficult than others.

Nevertheless, a statistical look at the Division's rate of success can be useful. The Division makes the following effort at quantification. Cases are divided into two groups: (1) those in which the court unambiguously adopts our reasoning and suggested result or those in which the court largely adopts our analysis; and (2) those in which the court largely or completely rejects our analysis. Percentages of cases in the former category can provide some measure of effectiveness. The Division litigates many difficult cases, and takes a candid and aggressive approach to that litigation. Nevertheless, it maintains an excellent record based on these simple criteria of wins and losses.

Between October 1, 1986 and January 31, 1987 (FY 1987), the Division achieved a favorable or partially favorable decision in seven of the nine cases in which courts have reached the merits (78%). In FY 1986, such success was attained in 35 of 46 merits decisions (76%) and, in FY 1985, in 32 of 38 merits decisions (84%). The overall success rate for the Division since January 20, 1981 has been 81%.

Amicus Curiae Participation

Because the bulk of the Division's enforcement work is accomplished through litigation, it is imperative that the Division closely monitor and, where necessary, participate in court cases to which the United States is not a party that interpret the constitutional provisions and civil rights statutes the Division is charged with enforcing. Decisions affecting key issues in these areas can have a lasting effect on Division enforcement responsibilities. In many of these cases, especially those concerned with developing or problematic areas of civil rights law, the Division uses the federal government's authority to participate in federal cases as *amicus curiae* to register the government's position on the issues in question. *Amicus curiae* participation is therefore regarded as an important part of the Division's enforcement responsibility.

An example of the Division's successful *amicus* participation can be found in *Wygant* v. *Jackson Board of Educ.*, 54 U.S.L.W. 4479 (U.S. May 19, 1986). In that case, a school district enacted a racial quota in layoffs, which subjected experienced teachers to losing their jobs solely because of the color of their skin. The Sixth Circuit had approved the discriminatory plan on the ground that the quota was a proper response to societal discrimination and the need for "role models" of particular races. The Supreme Court granted certiorari.

As problematic as the Jackson school board's plan was for its victims, the case had significance far beyond its specific circumstances. The Division judged that, if racial discrimination can be justified by concepts as vague as those offered in excuse for the layoff quota, the Fourteenth Amendment's promise of equal protection would be severely undermined. The Division conducted a detailed review of the history of the Equal Protection Clause, concluded that the plan was unconstitutional, and filed a brief as *amicus curiae* to that effect. Largely agreeing with the Division's analysis, the Supreme Court applied the most strict judicial scrutiny and ruled the school board's plan impermissible. It further ruled that concepts such as societal discrimination are too amorphous to justify additional discrimination and that race-based layoff preferences are in any event unduly intrusive on the rights of innocent third parties.

In other *amicus* cases, we have successfully argued in the Supreme Court that an employer must reasonably accommodate an employee's religious practice absent undue cost, even where a failure to accommodate does not force an employee to choose between his practice and his job, *Ansonia Board of Education* v. *Philbrook*, 55 U.S.L.W. 4019 (U.S. Nov. 17, 1986); that the rational basis test applies to public sector classifications involving the handicapped, *City of Cleburne* v. *Cleburne Living Center*, 53 U.S.L.W. 5022 (U.S. July 1, 1985); that the Eleventh Amendment precludes suits against the States for monetary damages under Section 504 of the Rehabilitation Act, *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985); that the Equal Protection Clause prohibits revoking parental child custody because the parent marries a person of a different race, *Palmore* v. *Sidoti*, 466 U.S. 429 (1984); that state courts in Mississippi must comply with Section 5 of the Voting Rights Act, *Hathorn* v. *Lovorn*, 457 U.S. 255 (1982); that employment discrimination by federal aid recipients based on handicap is prohibited under Section 504 of the Rehabilitation Act of 1973 even where the primary purpose of the federal aid is not to provide employment, *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984); that innocent employees may not be denied the benefits of their seniority in order to preserve gains in minority hiring and promotions, *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984); that a female associate of a law firm had stated an employment discrimination claim by alleging that consideration for partnership was a term or condition of employment, and that she had been denied partnership on the basis of her sex, *Hishon* v. *King & Spalding*, 467 U.S. 69 (1984); that a claim of sexual harassment could be maintained against an employer under Title VII of the Civil Rights Act of 1964 based on known or clearly discernible conduct of its supervisory employees, *Meritor Savings Bank* v. *Vinson*, 54 U.S.L.W. 4703 (U.S. June 19, 1986); and that Title IX of the Education Amendments of 1972 prohibits sex discrimination in employment in federally assisted educational programs, *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982).

The Division is constantly seeking to improve its monitoring of the burgeoning civil rights caseload in the federal courts. Its goal is to gain a comprehensive perspective on this litigation, allowing lawyers both to identify the best cases for *amicus curiae* participation and, once identified, to take timely and thoughtful action.

In that regard, in May 1986, the Division implemented a new computerized *amicus* targeting project. Since its inception, the Division's targeting project has been able to review 291 district court decisions. Noteworthy rulings were identified within weeks, and sometimes days, of their official entry into court records and in ample time for Division action. The Division's *amicus curiae* program is already expanding. By the end of the 1986 calendar year, 22 cases were under active consideration for *amicus* *curiae* participation. As more and more cases identified by our computer searches reach the status where *amicus* participation may be appropriate, further increases should result.

Legal Counsel and Legislative Activities

The Division is also called upon to provide legal advice within the Justice Department and elsewhere in the government on a spectrum of civil rights and related matters. Within the Civil Rights Division, for example, trial sections may seek appellate views on legal theories to be advanced during the trial of problematic or ground-breaking cases. Elsewhere in the Department, the Division is regularly asked to comment on such diverse issues as employment discrimination, Indian religious issues and prison conditions arising in litigation and programs under control of the Civil, Criminal, Antitrust and other divisions. Such counsel is also provided upon request to other federal agencies with legal questions on civil rights. In FY 1986, for example, we provided 34 written comments for use within the Civil Rights Division, other divisions and other agencies.

Furthermore, the Division also handles legislative matters involving civil rights. Chief among these duties is to provide comments on the civil rights aspects of proposed legislation referred to the Justice Department by Congress. The Division also reviews comments solicited from elsewhere in the Department and from other executive-branch agencies and departments. In addition, it reviews the legislative proposals of other agencies and departments on civil rights matters, drafts its own legislative initiatives, and either prepares or comments on presidential signing statements for enactments relevant to civil rights activities. As an example of the Division's legislative initiatives, the Division drafted amendments to strengthen the Fair Housing Act that were introduced in both the 98th and 99th Congresses.

Conclusion

Since 1981, the Division has maintained an active litigative program in both the Supreme Court and the courts of appeals. The program continues: 19 new cases have been assigned in FY 1987 (as of January 31, 1987), and we expect that additional assignments will be made on a regular basis. We further expect that, due to the expanded *amicus curiae* program discussed above, our activities in these areas will increase. It is anticipated that the remarkable success record maintained by the Division in appellate matters since 1981 will continue.

EXHIBIT 9

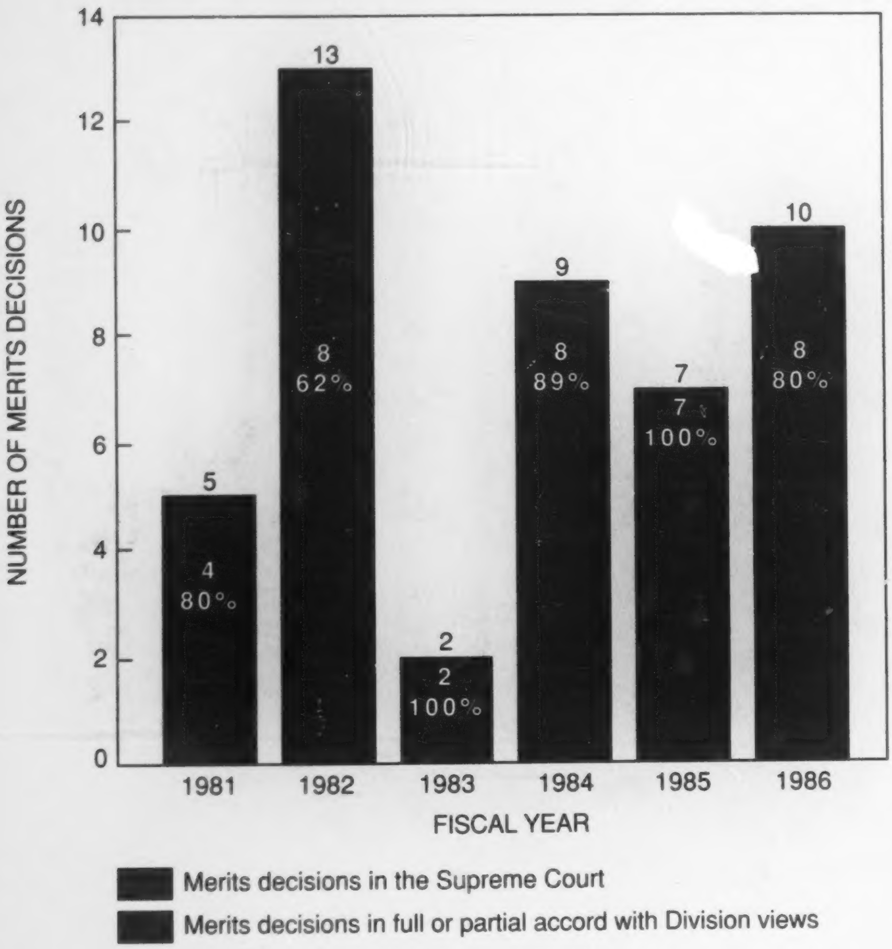
1. SUPREME COURT *AMICUS CURIAE* PARTICIPATION

January 20, 1981 - February 28, 1987

Case Name	State	Date	Subject Matter
Alexander v. Choate	TN	1984	Federal Programs
Ansonia v. Philbrook	CT	1986	Employment
Atascadero v. Scanlon	CA	1985	Federal Programs
Board of Educ. v. Rowley	NY	1981	Federal Programs
Block v. Rutherford	CA	1983	Institutions
Boston Fire v. NAACP	MA	1982	Employment
*Bratton v. Detroit	MI	1983	Employment
Brooks v. Winter	MI	1983	Voting
California Federal v. Guerra	CA	1986	Employment
California v. NAACP	CA	1984	Education
Cleburne v. Living Center	TX	1984	Equal Protection
Connecticut v. Teal	CT	1981	Employment
Consolidate Rail v. Darrone	PA	1983	Employment
Crawford v. Los Angeles	CA	1981	Education
*Deveraux v. Geary	MA	1985	Employment
General Tel. v. Falcon	TX	1982	Employment
Goodman v. Lukens Steel Co.	PA	1987	Employment
Gulf Oil v. Bernard	LA	1981	Employment
Hathorn v. Lovorn	MS	1982	Voting
Havens Realty v. Coleman	VA	1981	Housing
Hishon v. King & Spaulding	GA	1983	Employment
Hobbie v. UAC	FL	1986	Employment
Indianola v. Dotson	MS	1982	Voting
Johnson v. Chicago Bd. of Educ.	IL	1982	Education
Johnson v. Transp. Agency	CA	1986	Employment
Kremer v. Chemical	NY	1981	Employment
Local 93 v. Cleveland	OH	1985	Employment
McCain v. Lybrand	SC	1983	Voting
Martin v. Haith	NC	1986	Voting
Memphis v. Stotts	TN	1983	Employment
Meritor FSB v. Vinson	DC	1985	Employment
Miller-Wohl v. Montana	MT	1985	Employment
Mobile Sch. Bd. v. Jaffree	AL	1983	First Amendment
Montano v. Carey	NY	1982	Voting
NAACP v. Hampton	SC	1984	Voting
Nashville v. Kelley	TN	1982	Education
Nassau County v. Arline	FL	1986	Federal Programs
NCDOT v. Crest Street	NC	1986	Attorneys Fees
Palmore v. Sidoti	FL	1983	Equal Protection
Polk County v. Dodson	IN	1981	1983 (deprivation)
Pullman v. Swint	AL	1981	Employment
Scanlon v. Battle	PA	1981	Federal Programs

*/ The United States also participated as *amicus* in the court of appeals during the relevant time period.

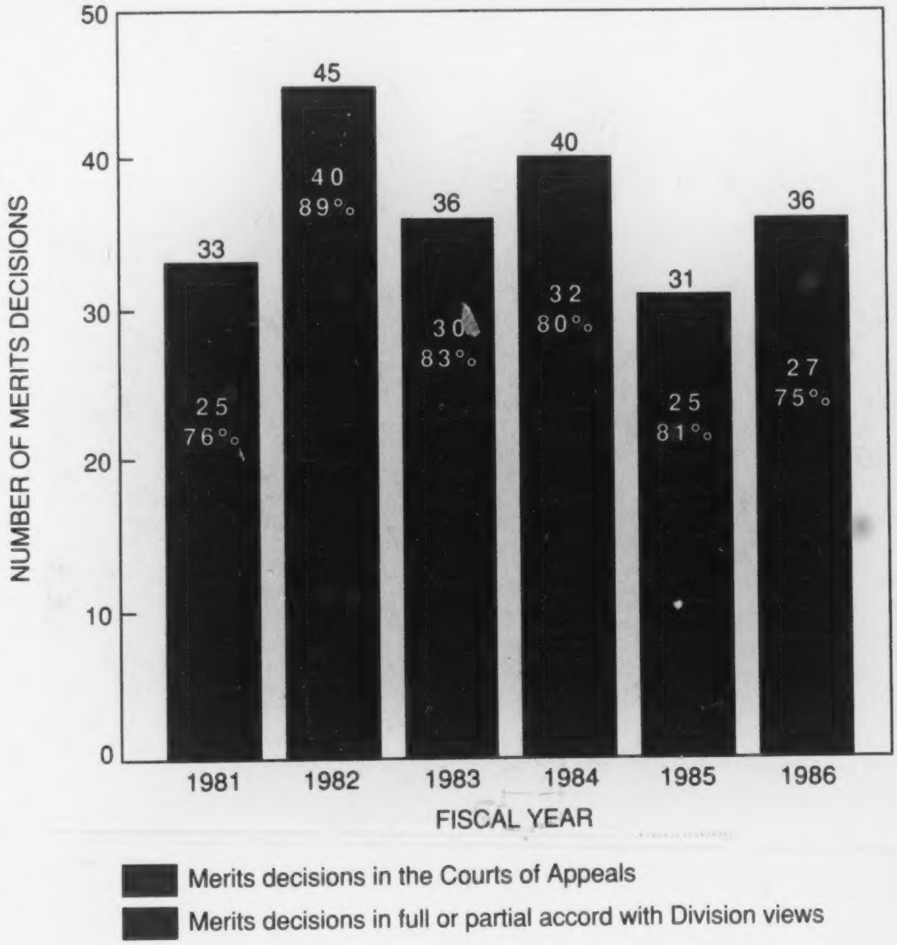
CIVIL RIGHTS DIVISION
SUPREME COURT MERITS DECISIONS
JANUARY 20, 1981 THROUGH SEPTEMBER 30, 1986



(VIII–A)

CIVIL RIGHTS DIVISION

COURTS OF APPEALS MERITS DECISIONS
JANUARY 20, 1981 THROUGH SEPTEMBER 30, 1986



(VIII-B)

Coordination of Civil Rights Enforcement Activity

Issued in late 1980, Executive Order 12250 directs the Attorney General to coordinate enforcement of over fifty federal laws that prohibit discrimination on the basis of race, color, national origin, sex, religion, and handicap in programs funded by the federal government (see Appendix IX-A, 56 Statutes Prohibiting Discrimination). These statutes embody a fundamental principle: the activities that the federal government funds from tax monies levied on all the people must be open to all the people without discrimination. The array of specific oversight and management responsibilities in Executive Order 12250 can be reduced to one essential duty: the Department of Justice must ensure that the federal agencies consistently and effectively enforce the civil rights statutes.

To this end, each of the 27 federal agencies that provides federal financial assistance has established a civil rights enforcement program to ensure that its funds are not used to support discrimination. In FY 1985, these agencies collectively devoted close to 2,000 workyears to investigating complaints, conducting compliance reviews, and collecting and reviewing data to ensure the nondiscriminatory operation of their recipients' programs and activities. Thus, the enormous scope of federal financial assistance coupled with the large number of agencies involved made civil rights enforcement, at a minimum, complex (see Appendix IX-B, Types of Recipients of Federal Financial Assistance by Agency).

The enforcement of civil rights statutes was further complicated by their piecemeal enactment, their disparate purposes and applications, and by the decentralized, agency-by-agency mode of enforcement. Instances of inconsistent application of these civil rights laws among different federal agencies were reported. Ineffective procedures hampered enforcement efforts at some agencies, while others had unduly burdensome reporting requirements. Gaps in coverage coexisted with overlaps in coverage—some federally aided programs were investigated by several federal agencies, while the practices of other such programs went unexamined. Further, the more than 90 federal executive agencies, themselves subject since 1978 to the statutory requirement that they must not discriminate on the basis of handicap in the operation of their own programs and activities, had made little progress towards compliance.

The Division has responded to these problems with regulatory and administrative initiatives on four fronts:

- Monitoring the efforts of agencies to enforce civil rights in their federally assisted programs;
- Reviewing all new civil rights regulations covered by the Executive Order;
- Providing legal and policy guidance on general issues to all agencies, and giving technical assistance and training in response to requests from individual federal agencies; and
- Establishing programs to ensure that the federal executive branch does not discriminate on the basis of handicap in its own programs and activities.

Monitoring Agencies' Enforcement of Civil Rights Statutes

The Division has initiated a yearly planning process to organize and streamline civil rights enforcement. We require each federal agency with civil rights enforcement responsibilities under the Executive Order to develop an "implementation plan" that identifies the activities the agency intends to accomplish in a one-year period in the context of long-range goals. In FY 1986, the Division assisted 26 agencies in developing appropriate objectives and in planning practical, attainable activities to achieve them, ensuring more effective use of civil rights resources. Through its formal review of these plans, the Division has helped to coordinate the disparate activities of these agencies, making possible a government-wide approach to civil rights issues that goes well beyond the scope of any one agency acting alone.

When an agency's plan specifies that the agency intends to revise an investigative manual or provide interpretive guidance to staff on a civil rights policy, the Division provides advice to ensure that the work product is consistent with similar policies and practices at other agencies and that it accurately follows civil rights law.

Federal agencies spend considerable enforcement resources on the investigation of complaints. In FY 1983, the federal government received 4,937 complaints of discrimination in federally assisted programs; in FY 1984, 4,018; and in FY 1985, 5,155. The Division often provides advice to agencies on how a specific complaint should be handled. For example, in referring to the Federal Aviation Administration (FAA) a complaint on the treatment of blind passengers by airline personnel, the Civil Rights Division advised the FAA that it had an obligation to review airline policies and procedures filed with the FAA and to refuse to accept any that it found discriminated against qualified handicapped persons on the basis of handicap.

Often federal agencies seek advice from the Division on how to investigate complaints or on how to resolve complex or precedent-setting issues. Literally hundreds of such requests are answered by the Division's staff each year. While the simpler requests are resolved quickly over the telephone, some require painstaking research and break new civil rights ground. For example, the Office of Revenue Sharing (ORS) in the Department of Treasury asked whether persons with 20/40 or 20/70 vision that can be corrected to 20/20 with glasses are handicapped individuals within the meaning of Section 504 of the Rehabilitation Act. The Department determined that, even assuming that modest deviations from 20/20 vision constitute a physical impairment, they do not "substantially" limit either the major life activity of "seeing" or of "working" and, thus, do not come within the protections of the statute. The answer resolved several dozen cases involving fire fighters and police officers that were being processed at ORS.

Reviewing New Civil Rights Regulations

If the federal civil rights effort is to be successful, agency regulations must be clear, appropriate, and consistent. The Division must, therefore, not only ensure that the 39 statutes that prohibit discrimination on the basis of race are consistent with one another, but also that these regulations are consistent with the regulations issued under the 50 statutes prohibiting discrimination on the basis of sex, the 33 statutes prohibiting discrimination on the basis of religion, and the 20 statutes prohibiting discrimination on the basis of handicap (see Appendix IX-A, 56 Statutes Prohibiting Discrimination).

The Division requires each federal agency to submit civil rights regulations to the Assistant Attorney General for review. During FY 1986, this review was undertaken in connection with 34 separate regulations for federally assisted programs. Most often, the Division suggested changes that conformed these new regulations to the most recent judicial pronouncements, particularly those of the Supreme Court. Thus, for example, the Division provided comments to the Department of Education on its proposal to amend its regulation implementing Title IX of the Education Amendments of 1972, as amended, concerning fringe benefit plans so that the regulation would be consistent with Supreme Court decisions in *City of Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1978), and *Arizona Governing Committee for Tax Deferred Annuity* v. *Norris*, 463 U.S. 1073 (1983). The Division advised the Department of Education that, although equal contributions by male and female employees to fringe benefit plans are required, neither *Manhart* nor *Norris* requires equal contributions by employers.

Providing Legal and Policy Guidance

The Division takes steps to ensure that federal agency personnel, whose job it is to enforce the civil rights statutes, are apprised of new pertinent information. During FY 1986, Division staff recorded over 600 instances of providing technical assistance to federal agency personnel, most often through meetings and telephone calls.

During this time, Division staff also developed and conducted training seminars. Although developing a training module and tailoring it to the needs of a specific federal agency is a time-consuming task, past experience has shown it to be extraordinarily useful in ensuring that civil rights personnel interpret the civil rights statutes correctly. For example, the Division conducted seminars on hearing impairments, one for the civil rights staff of the General Services Administration and one for program managers at the Drug Enforcement Administration. These seminars focused on hearing impairments as disabling conditions, the problems that deaf individuals face in a hearing world, the civil rights implications of these problems, and potential solutions to these problems. The seminars highlighted the obligations under federal law to communicate effectively with beneficiaries of federally assisted programs by using appropriate auxiliary aids, including the use of sign language interpreters, assistive listening devices, and devices that make telephone communication possible for deaf persons.

In 1986, the Division also distributed more than 1,500 copies of six memoranda on issues of general applicability to federal agency staff and the general public. One provided guidance on how to conduct a public meeting so that hearing-impaired, visually-impaired, and mobility-impaired persons would have access to the meeting. Another provided information on assistive listening devices, state-of-the-art equipment that can be used to improve communication with hearing-impaired persons. Because these memoranda provide information on how to make programs accessible to disabled persons in a cost-effective manner, they should prove instrumental in fostering compliance with all federal laws that prohibit discrimination on the basis of handicap.

Besides the cases in which the Division represents the United States, the Division frequently participates in cases to ensure consistency and uniformity in the government's legal positions on civil rights statutes. Division participation is a vital link between the federal government's programmatic enforcement efforts and its litigation strategy. Division efforts ensure that what the United States Attorney in Philadelphia does in a case to make a federal building accessible is consistent with the efforts of the Navajo and Hopi Relocation Commission to find accessible housing for Native Americans in Arizona. The Division thus ensures that federal civil rights efforts are consistently implemented, whether they are initiated administratively or through litigation.

Establishing Section 504 Programs

In 1978, Congress extended the protections of Section 504 of the Rehabilitation Act of 1973 to all programs and activities conducted by federal executive agencies. Until that time Section 504 had been the province of 27 agencies that provided federal financial assistance; with the 1978 amendment, over 90 federal agencies were faced with responsibilities to ensure that their own programs were open to disabled people. No action was taken in response to the legislative directive until 1981 when this Administration took office. Under current leadership, the Division, taking account of the significant agency differences in size, mission, nature and complexity, crafted advice to meet the unique needs of over 90 agencies, not only for the drafting of regulations but also for the actual implementation of the nondiscrimination obligation.

Applying disability rights principles to federal programs as large and diverse as the national parks system, the social security system, the federal prisons, and the operations of the nation's tax collection process has been a time-consuming, massive undertaking. To date, 46 federal agencies have issued final regulations implementing prohibitions against discrimination on the basis of handicap in their own programs. Another 10 have already published proposed rules for public comment, and another 33 have drafted rules that are being readied for publication (see Appendix IX-C, Status of Section 504 Regulations Governing Federally Conducted Programs as of January 31, 1987).

To expedite the lengthy rule-publication process, the Division pioneered a new procedure that enables groups of federal agencies to publish their rules together at one time. This new procedure eliminated most of the paperwork and administrative burdens for agencies issuing rules, thus expediting the final publication of needed regulations. In addition, joint publication saved the federal agencies over $280,000 in publication costs.

Publication of Section 504 rules is, however, only the first step in ensuring that federal programs are accessible to disabled people. The Division has written to all agencies to remind them of their obligations and to offer assistance in meeting them. This assistance is being translated into identifiable, concrete advances for disabled people. TDD's are being installed in federal agencies and their availability publicized in the deaf community. Civil rights documents are being produced in Braille, in large print, and on tone-indexed tape. Federal buildings are being surveyed and modified under tough new federal accessibility standards, so that physically disabled persons can participate freely at federal worksites. Federal agencies have instituted impartial systems under which complaints alleging discrimination on the basis of handicap in federal programs can be resolved quickly and fairly.

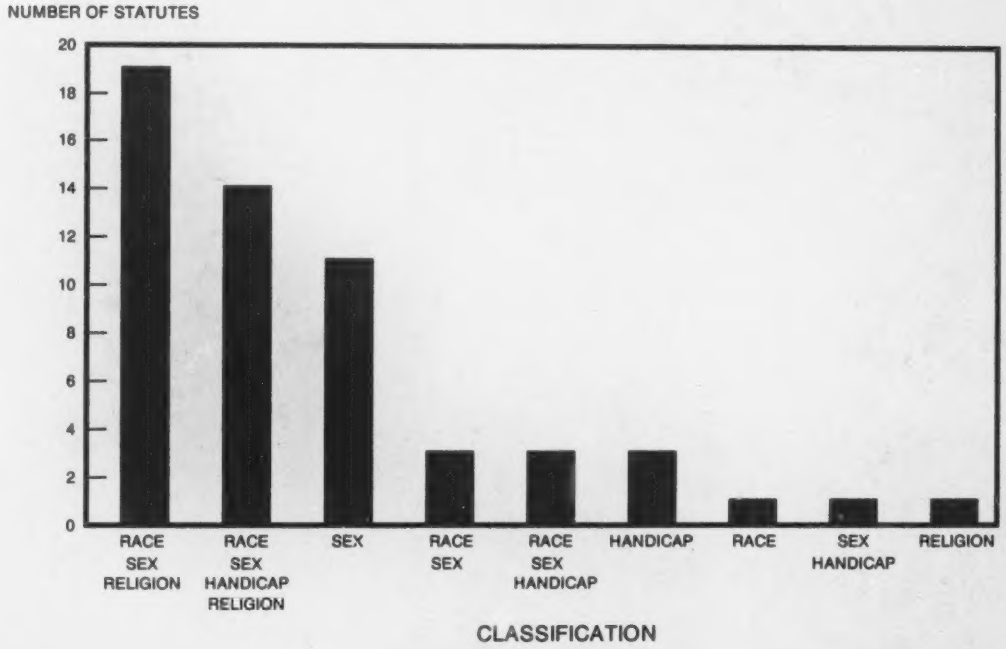
Conclusion

The Division has initiated a wide range of leadership initiatives to improve the effectiveness and efficiency of the overall federal civil rights enforcement effort. Further, it has established a comprehensive yet common-sense framework within which all agencies administering federal financial assistance programs are required to establish civil rights goals and priorities, and to tailor specific activities to achieve them. This adoption of sound planning and management principles as an essential aspect of civil rights enforcement has improved both performance and results. Through its review of agency regulations, policies, and programs, the Division has contributed substantially to the ability of the federal government to speak with a "single voice" in civil rights matters. It has provided much-needed guidance that has enabled agencies to speak with clarity and consistency to their recipients and to the public, especially in implementing and interpreting landmark judicial decisions. Finally, the Division has led the way for the more than 90 federal executive agencies to take substantial, positive efforts to comply with the statutory requirement that the federal government not discriminate against handicapped persons in the operation of its own programs and activities. The Division's regulatory and programmatic initiatives have served as a catalyst for government-wide action, helping to ensure that the promise of Section 504 becomes a reality.

CIVIL RIGHTS DIVISION

56 STATUTES PROHIBITING DISCRIMINATION

(BY TYPE OF COVERAGE)



(IX-A)

TYPES OF RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE BY AGENCY

Type of Recipient Funded	AGENCY																										
	ED	HHS	HUD	DOT	DOL	USDA	ORS	SBA	DOD	VA	TVA	DOE	DOI	DOC	OJARS	EPA	ACTION	NEA	GSA	NRC	NASA	NSF	FEMA	AID	State	NEH	USIA
Education																											
Elementary & Secondary																											
State Dept. of Education	X												X						X								
State Rehab. Agencies	X	X															X		X								
Private Non-Profit Association	X	X						X																			
Local Community Orgs. (some local gov't)	X	X					X																X				
Local School Districts (some multi-district agencies)	X			X		X	X		X		X	X							X		X		X			X	X
Post Secondary																											
Public Colleges & Universities	X	X		X		X		X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X
Private Colleges & Universities	X	X		X		X		X	X	X	X	X		X	X	X	X	X	X		X	X	X	X	X	X	X
Private Non-college Degree Institutions (Principally for Profit proprietary schools)	X			X					X	X									X		X						
Individuals	X	X		X					X	X			X		X	X		X	X		X	X				X	X
Health/Social Services																											
Medical Schools (university affiliated & independent)		X								X	X	X				X			X			X					
Public & Private Hospitals (Profit & Nonprofit)		X				X		X	X	X	X	X				X			X			X	X				
Social Service Orgs. (S&L, Private Profit & Nonprofit)		X				X				X	X	X	X				X		X				X				
Day/Foster Care Facilities		X	X			X		X	X								X		X								
Mental Health Centers		X	X			X			X	X							X		X								
Alcohol/Drug Treatment Centers		X	X							X			X		X		X										
Community Action Organizations		X	X			X					X				X		X		X								
Migrant Health Clinics		X															X										
Halfway Houses		X	X												X				X								
Health Planning Orgs. (S&L)		X									X																
Health Research Orgs. (Public & Private, Profit & Nonprofit)		X								X	X	X				X			X			X		X		X	
Physicians		X						X	X	X																	
Individuals (Primarily researchers)		X									X					X						X					

(IX-B)

AGENCY

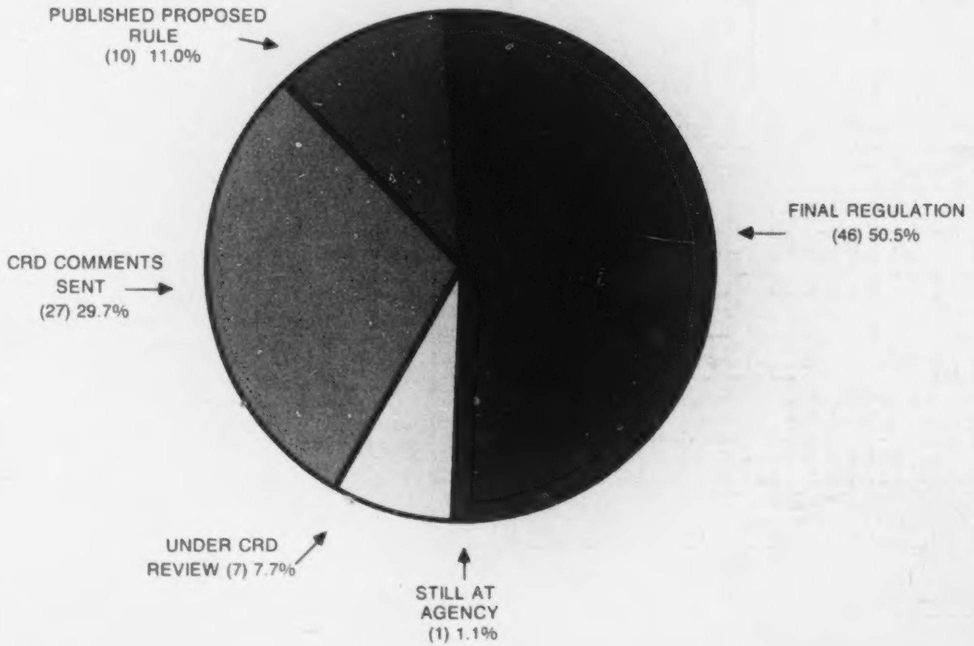
	ED	HHS	HUD	DOT	DOL	USDA	ORS	SBA	DOD	VA	TVA	DOE	DOI	DOC	OJARS	EPA	ACTION	NEA	GSA	NRC	NASA	NSF	FEMA	AID	State	NEH	USIA
Community Service																											
Public Community Action Orgs. (L) (e.g., legal services, cooperatives)		X	X		X	X	X		X		X		X	X	X	X	X		X								X
Private Nonprofit Community Service Orgs. (e.g., UGF funded)		X	X	X	X	X	X				X			X	X		X		X					X		X	X
Arts & Humanities (including Tax Exempt Orgs.)																											
Arts Org./Foundations (S&L & Private Nonprofit)													X					X								X	
Media & Performing Arts. Org. (Private Profit & Nonprofit) (e.g., TV, Radio, theatre companies, etc.)																		X								X	
Museums (S&L & Private Nonprofit)	X								X				X					X	X			X	X			X	
Individuals													X					X								X	
Tax Exempt Orgs. (e.g., churches, cemeteries)											X						X	X									
Commerce & Industry																											
Corporations (Public & Private, Profit & Nonprofit)			X			X		X		X	X	X		X								X	X				
Small Business						X		X		X	X	X							X			X	X				
Individuals						X		X	X	X	X	X										X					
Housing																											
Public Housing Authorities (S&L)			X			X													X				X				
Clearinghouses/Councils of gov'ts. (S&L)			X			X													X								
Housing Depts. of General Fund (S&L)			X	X		X																					
Indian Tribal Org. (Housing)			X			X										X											
Individuals			X	X		X		X			X		X										X				

AGENCY

	ED	HHS	HUD	DOT	DOL	USDA	ORS	SBA	DOD	VA	TVA	DOE	DOI	DOC	OJARS	EPA	ACTION	NEA	GSA	NRC	NASA	NSF	FEMA	AID	State	NEH	USIA
Government Services																											
General Operations (S) (unidentified gov't. quasi-gov't)				X					X	X	X	X	X	X		X			X	X	X	X	X			X	
General Operations (L) (unidentified gov't. quasi-gov't)				X			X		X		X	X	X	X		X			X			X	X				
Planning & Development Depts./Agencies (S&L)			X	X		X		X	X		X		X	X	X	X			X							X	
Public Safety/Police/Fire Depts./Agencies (S&L)			X	X	X	X	X				X				X				X				X				
Criminal Justice Councils (S)															X												
Criminal Justice System/Orgs. (L)						X									X												
National Guard/Civil Defense (S&L)									X										X				X				
Land/Natural Resources																											
Parks/Recreation/Wildlife Depts. (S&L)			X			X	X		X	X	X		X			X			X				X				
Libraries (L)	X		X			X	X												X				X			X	
Water/Sewer Depts. (S&L)			X			X	X		X		X		X	X		X											
Environmental/Energy Depts. (S&L)			X				X		X		X	X				X											
Transportation																											
Transportation Depts. (S&L)				X			X		X		X								X				X				
Public Transit Authorities (S)				X							X																
Airlines/Airports (S&L)				X																							
Labor																											
Employment Security Depts./Agencies (S)					X																						
Labor Depts./Orgs. (S&L)			X	X	X	X	X				X																

CIVIL RIGHTS DIVISION

STATUS OF SECTION 504 REGULATIONS GOVERNING FEDERALLY CONDUCTED PROGRAMS AS OF JANUARY 31, 1987



(IX–C)

AUTHORIZATION LEGISLATION AND OVERSIGHT OF THE IMMIGRATION AND NATURALIZATION SERVICE

TUESDAY, MARCH 24, 1987

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 2:07 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy presiding.

Also present: Senators Simon, Leahy, Simpson, Thurmond, Specter, and Grassley.

Staff present: Jerry Tinker, Staff Director; Michael Myers, Counsel; and Richard Day, Minority Staff Director of the Subcommittee on Immigration and Rufugee Affairs.

OPENING STATEMENT OF SENATOR KENNEDY

Senator Kennedy. We will be in order.

This hearing continues the Judiciary Committee's oversight of the budget request of the Department of Justice, today focusing on the programs of the Immigration and Naturalization Service.

Because the budget increases requested this year by INS are based primarily upon the new requirements to implement the Immigration Reform and Control Act of 1986, Senator Simpson and I felt it would be useful to have a panel of administration witnesses to review all aspects of the implementation of the immigration bill. So today we will be welcoming the Commissioner of the Immigration and Naturalization Service, Alan Nelson, as well as representatives of the Department of Justice, the Department of Labor, the Department of Agriculture and the Department of Health and Human Services. All of these agencies have important responsibilities under provisions of the new immigration legislation.

At the outset I want to acknowledge that the only reason we are here this afternoon addressing this important issue is because of the tireless work of my colleague, the Senator from Wyoming, Senator Simpson. After 6 years of hard work, the Congress last October finally addressed the issue of immigration reform which Senator Simpson had so persistently pressed upon us.

Now, we have an obligation to assure that these reforms are implemented as intended by Congress and with maximum efficiency and, more importantly, with the greatest degree of flexibility and fairness.

Because the immigration bill we adopted last year takes us into so many unchartered waters, there are understandably many concerns and fears over some provisions of the new law, and how the regulations will be fashioned to implement them.

Many are concerned whether the legalization program established under the bill will truly be available to all who qualify without the fear of the costs that are involved.

Others worry whether the obligations employers face under the new employer sanctions are being defined as simply as possible, and whether employers are getting the message that a few simple steps will meet the requirements of the bill.

Also this afternoon we will want to know if the Justice Department is taking seriously its new statutory mandate to address any discrimination which may be caused by employer sanctions.

In implementing the new foreign agricultural workers programs in the new law, are adequate steps under way within the administration to balance the legitimate needs of farmers for foreign workers with the urgent need to ensure that those workers receive the full protection of our labor laws?

With employer sanctions in place as a major new enforcement tool, is it not time for INS to alter the rising use of workplace raids, long-term immigration detention, and other disruptive enforcement devices?

Finally, as Chairman of the Immigration Subcommittee, I am deeply troubled by the Department's mistaken and ill-advised attempt to constrict the Act's anti-discrimination provisions by inserting in the proposed regulations an intent standard contrary to the Act's explicit language and legislative history. I am confident that the final regulations will delete the intent standard and preserve the will of Congress.

These and other issues will be before us this afternoon and in the days ahead as we work together to implement the sweeping immigration reforms adopted by the last Congress.

The Senator from Wyoming.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I thank you very much. Thank you for calling this important hearing on the implementation of the bill. Both the administration and we in Congress have a large investment of time and effort in this one. We must work together to ensure a fair and effective implementation which will, indeed, follow congressional intent.

I appreciate very much, Ted, your continued activity here, because you have a tremendously heavy agenda with your other legislative duties and your new chairmanships. I appreciate the continual presence that you have here. I say that too with Senator Paul Simon. As the ranking member of this subcommittee, I pledge to be of every proper assistance and support I can to you. I know it will be done fairly and with good purpose.

Now, I think it is fair to say that Congress intended that more resources be available to prevent illegal entry at the border and visa violations. We knew what we were doing in repealing the Texas Proviso and creating sanctions, legalization and relief for agricultural employers. Those things are in the bill, and it was also our intent to streamline the H-2 program and not make that a battleground for a struggle of renewed issues of civil rights. That is not what the H-2 proposal was. It was to streamline a program which would eventually work to take the place of the use of illegal undocumented persons and give agriculture a chance to, through the years, wean themselves away from an illegal flow.

I am a little puzzled at the response out there in certain sectors about aspects of the bill. I will be anxious to hear how that comes about. We must make the people recognize that we have passed some pretty stiff laws about fraudulent manufacture and sale and use of fraudulent documentation. We are also going to give special emphasis to legalization and education. We want to be sure it has been done swiftly and with vigor and without discrimination. Those are the things all three of us, four of us, all of us pledged—all of us in the Congress—and I pledge to assist you and look forward to working with you and your staff in this process.

Senator KENNEDY. Thank you. Senator Simon.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. Just very briefly, Mr. Chairman. First of all, I want to commend the Commissioner and his staff for early publication of the regulations. There are concerns that I have. One is on fees.

Let us just say a family all of a sudden has an emergency medical situation, and they do not come up with the dollars that are necessary. How do we take care of these kinds of situations?

Second, what about families that are divided on the legalization status? The wife may have been here prior to January 1, 1982; the husband later, or whatever the situation. How do we deal with that?

The anti-discrimination provisions clearly, at least in the minds of some of us in this subcommittee, we have some concerns here. And while you are here, I would also want a chance to ask you and we would appreciate your staff giving us a reaction on the whole Indochinese situation with the closing of the camps in Thailand. What does that mean for these people? What does it mean here in this country?

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

The Senator from Pennsylvania.

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. Thank you very much, Mr. Chairman.

A concern that I have that I would like to express at this time involves the granting of asylum, and it is of continuing interest which I have expressed to the Commissioner and to others arising from a number of factors illustrated by a Guatemalan who came to my office several years ago in Pennsylvania and had been denied asylum. The issue arose as to the likelihood of political persecution in Guatemala, the issue of corroboration.

I observed on his hands burn marks which corroborated his story about physical torture. I and others had then requested a GAO study which disclosed a marked difference in the granting of asylum ranging anywhere from 2 percent for those applicants from El Salvador to some 66 percent of those applicants from Iran. And I note that the Supreme Court has come down with a decision which bears on this issue on the burden of proof, rejecting the government's position that an alien must prove a clear probability of persecution, holding instead than an alien need only prove a reasonable possibility of persecution.

When you talk about legal standards of proof, it is perhaps helpful and perhaps not too helpful; it is really an administrative decision whether you talk about the vagaries of proofs: the preponderance of the evidence, proof beyond a reasonable doubt, clear and convincing, reasonable possibility, clear probability, et cetera. But as we move forward into the administration of this new bill, it would be my hope that there is an equitable standard applied across the board because of the sense that I have that there is a pattern of discrimination.

That is something that, to the extent I can participate in these hearings, I will be questioning about and would very much appreciate your cooperation on, Commissioner.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much, Senator.

[Prepared statement follows:]

STATEMENT OF SENATOR ORRIN G. HATCH
HEARING ON OVERSIGHT AND AUTHORIZATION FOR THE IMMIGRATION AND NATURALIZATION SERVICE
MARCH 24, 1987

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR HOLDING TODAY'S OVERSIGHT HEARING ON THE FY 1980 BUDGET AUTHORIZATION FOR THE IMMIGRATION AND NATURALIZATION SERVICE. I WOULD ALSO LIKE TO WELCOME OUR DISTINGUISHED PANEL OF WITNESSES WHO ARE HERE TODAY. I WOULD LIKE TO COMMEND THE EXECUTIVE BRANCH FOR THE EXPEDITIOUS MANNER IN WHICH IT IS MOVING FORWARD WITH THE REGULATORY CHANGES NECESSITATED BY THE NEW IMMIGRATION LAW, AND THANK THE PANEL FOR COMING HERE TODAY TO EXPLAIN SOME OF THE REGULATORY CHANGES THAT ARE NOW TAKING PLACE.

OF THE VARIOUS FUNCTIONS CARRIED OUT BY THE VAST ARRAY OF GOVERNMENT AGENCIES, THOSE PERFORMED BY THE IMMIGRATION AND NATURALIZATION SERVICE ARE SOME OF THE MOST SENSITIVE. THIS IS A COUNTRY FOUNDED BY AND CREATED FOR IMMIGRANTS. THROUGHOUT OUR HISTORY WE HAVE OPENED OUR DOORS TO WAVE AFTER WAVE OF NEW IMMIGRANTS. AND TODAY, WE MUST STILL MAKE PROVISION FOR BOTH THE PERMANENT AND TEMPORARY ADMISSION OF FOREIGNERS TO OUR LAND.

GIVEN THE ENORMOUS NUMBER OF PEOPLE FROM THROUGHOUT THE WORLD WHO WANT TO COME TO THIS NATION, IT HAS BEEN OCCASIONALLY NECESSARY TO EXAMINE OUR LAWS WHICH CONTROL LEGAL ADMISSION. OVER THE LAST FEW YEARS WE SPENT A GREAT DEAL OF TIME EXAMINING A COMPLETE OVERHAUL OF THOSE LAWS. WHILE IDEOLOGICAL DIFFERENCES PREVENTED SOME OF US FROM SUPPORTING THE EVENTUAL RESULT OF THAT EXAMINATION, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, THOSE CHANGES ARE NOW THE LAW AND WILL SOON BE ENFORCED IN THEIR ENTIRETY. IT THEREFORE BEHOOVES US TO EXAMINE THE REGULATIONS THAT ARE CURRENTLY BEING PROMULGATED BY THE RESPONSIBLE AGENCIES AND DEPARTMENTS TO INSURE THAT CONGRESSIONAL INTENT IS BEING FOLLOWED.

DURING THE CONSIDERATION OF THIS NEW LAW, I EXPRESSED MY CONCERN OVER THE EFFECT THE CHANGES WOULD HAVE ON THE PRODUCERS OF PERISHABLE FARM COMMODITIES. I AM STILL VERY MUCH CONCERNED THAT THE SMALL FARMERS, WHO CULTIVATE MOST OF THE PERISHABLE COMMODITIES, WILL BE SUSCEPTIBLE TO SERIOUS CROP LOSSES WHICH DID OCCUR UNDER THE OFTEN INFLEXIBLE PROVISIONS OF THE OLD H-2 PROGRAM. I AM STILL NOT ENTIRELY CONVINCED THAT THE NEW H-2A REGULATIONS WILL ADEQUATELY DEAL WITH THESE LOSSES.

THE AMENDMENT INTRODUCED BY SENATOR WILSON, WHICH I COSPONSORED, WAS ONLY NARROWLY DEFEATED, INDICATING THE STRONG SENSE AMONG THE MEMBERS OF THIS BODY THAT H-2 REFORMS IN THE BILL MAY NOT HAVE BEEN SENSITIVE ENOUGH TO THE PROBLEMS FACED

BY THOSE FARMERS. IT IS THEREFORE MY HOPE THAT AS THESE REGULATIONS NEAR COMPLETION, THEY WILL TAKE INTO ACCOUNT THE CONCERNS EXPRESSED BY MYSELF AND OTHERS.

IN ADDITION TO THESE CONCERNS, I AM STILL TROUBLED BY THE EMPLOYER SANCTIONS AND LEGALIZATION SECTIONS OF THE LAW. I CONTINUE TO RECEIVE A LOT OF CORRESPONDENCE ON THESE MATTERS, ASKING THAT THE PROMULGATION OF THESE REGULATIONS BE OBSERVED VERY CLOSELY. THERE IS STILL MUCH SKEPTICISM THAT EMPLOYER SANCTIONS WILL PRODUCE THE DESIRED EFFECT ON THE NUMBER OF ILLEGAL ALIENS IN OUR COUNTRY.

BECAUSE OF THE GREAT ABUNDANCE THAT IS AVAILABLE IN THIS GREAT NATION WE MUST ALWAYS STRIVE TO KEEP OUR DOORS OPEN TO THOSE WHO WOULD SEEK A NEW HOME AND BEGINNING WITH US. AT THE SAME TIME, WE MUST MAKE SURE THAT SUCH ENTRANCE IS CONDUCTED IN AN ORDERLY AND LEGAL MANNER. THE IMMIGRATION AND NATURALIZATION SERVICE HAS BEEN GIVEN THE IMPORTANT RESPONSIBILITY OF FULFILLING THAT GOAL. IN SO DOING, IT MUST MEET THE NEEDS OF BOTH THE CITIZENS OF THIS NATION AND THOSE WHO WOULD LEGALLY COME HERE. IN FULFILLING THAT RESPONSIBILITY, THE SERVICE MUST BE CAREFUL NOT TO TRAMPLE THE RIGHTS OF EITHER GROUP. HOPEFULLY THE TESTIMONY WE WILL HEAR TODAY WILL HELP US IN REACHING THAT GOAL.

Senator **Kennedy**. The first witness representing the leading agency in implementing the bill is Alan Nelson, Commissioner of the Immigration Service. Next is Mark Disler, who is the Deputy Assistant Attorney General in the Civil Rights Division, and who will speak to the establishment of a special counsel to protect against discrimination. Michael Baroody, Assistant Secretary for Policy in the Department of Labor, will speak to H-2 and foreign agricultural worker issues. Ewen Wilson, Deputy Assistant Secretary of the Department of Agriculture, will address the definition of perishable crops. And Phillip Hawkes, the Deputy Administrator of the Family Support Administration in the Department of Health and Human Services, will comment on HHS plans to reimburse States for any costs involved in implementing the legislation.

I think what I am interested in is what the departments are doing in terms of writing the regulations to implement the bill. What issues and problems have you encountered? How have you resolved those issues? And where do we go from here?

I too, would like to commend Mr. Nelson for the expeditious way in which you have made public your proposed rules. My friend, Senator Simon, has commented on it, and I think you deserve a lot of credit for that. It is a tribute to you and your colleagues in INS for going the extra mile in giving everyone interested in this important and controversial legislation ample time to comment on the regulations.

I notice that the Department of Justice has just issued its regulations yesterday, I understand, on the special counsel—not quite as fast a track.

Mr. Nelson, we will ask you to proceed. We would like everyone to limit, if they would, their presentations to 5 minutes. If they want to submit a full statement, that will be fine. We will bring out, I think, the principal points in the question period. We are going to be voting at 3:00 o'clock in any event, so we are going to have some interruptions. I know that we will then begin to lose some of the members here, so we want to see if we can move to the highlights of your testimony and then have time for questions.

Mr. Nelson, would you proceed.

STATEMENT OF PANEL CONSISTING OF HON. ALAN NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; MARK R. DISLER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE; MICHAEL E. BAROODY, ASSISTANT SECRETARY FOR POLICY, U.S. DEPARTMENT OF LABOR; PHILLIP N. HAWKES, DEPUTY ADMINISTRATOR, FAMILY SUPPORT ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND EWEN WILSON, DEPUTY ASSISTANT SECRETARY FOR ECONOMICS, U.S. DEPARTMENT OF AGRICULTURE

Mr. **Nelson**. Thank you, Mr. Chairman and members of the subcommittee. It is a pleasure again to be before you, and I look forward to the testimony of my colleagues and myself and to respond to your questions and comments.

I would like to submit the statement for the record, and I will summarize it and make every effort to keep it in the 5 minutes.

I think it would help to start out with a brief summary on the fiscal year 1988 budget proposal since, as indicated, this is an important part of implementing the bill. The administration has submitted for INS an 1988 budget request for over $838 million and more than 15,000 positions. In addition to that, unappropriated moneys under user fees and legalization fees, the total is over $1 billion for fiscal year 1988. This legislation and the funding to support it provides what this country has needed for a long time—a credible large-scale enforcement effort to control illegal immigration with employer sanctions, a human legalization program, and the new agricultural workers programs.

I think it is interesting to note that the budget request for INS has grown from $440 million in 1982 at the beginning of the Reagan administration to this request for 1988 of over $1 billion. This is very significant, and we certainly look forward to the Senate and the House rapidly moving forward to approve these budget requests so we can get the funding and the personnel to go forward.

Turning now to the regulations, I appreciate the comments of the Chairman and Senator Simon regarding the regulatory process. This was an unusual step we took in January of publishing or issuing preliminary draft regulations with an opportunity for comment from a very wide spectrum of people and organizations. We, in fact, got over 2 feet high of comments back; very helpful. We reviewed and evaluated all those and used a great deal of that in developing the proposed final regulations which were published last week in the Federal Register.

With the 30-day comment period, we anticipate by the middle of April, roughly, we will have the comments concluded, and we will then proceed to issue the interim regulations in time for the beginning of legalization at the beginning of May.

Certainly along that line, I doubt—and I again appreciate the comments of the committee—that any new Federal regulations have been prepared with more public comment and greater opportunity for public participation than these immigration regulations. Obviously, they are still subject to comment, further modifications, and we look forward to the continued process.

Let me turn now to the issue of the legalization fees which raised a lot of questions. I think our position is absolutely sound. A fee structure has been set and publicized for both legalization and the special agricultural worker program. I will use the word "SAW" from here on; it is easier. It is a basic fee of $185 per applicant, but with a family with $50 per child in the home under 18 and a family cap of $420. I might note that this is an unusual step and one that does not apply to legal immigrants. So a special consideration there.

This fee structure accomplishes several key objectives: Number one, it protects the taxpayer by ensuring that the costs of the program are covered by the anticipated revenue generated;

Secondly, it assures a reasonable fee based on the service provided;

Third, it compares favorably with the cost, the exact same cost of $185 charged for an immigrant visa. It is sound policy and basis fairness;

Lastly, and fourth, it meets congressional intent. I would like to introduce into the record, Mr. Chairman, if I might, a statement number one that is Section 201(c)7(A) of the Immigration and Reform Control Act, which has the words for fees "to cover administrative and other expenses." And I would secondly like to introduce page 92 of the Conference Report on the Immigration Reform and Control Act, and the relevant language there is as follows: "The Conference substitute requires the Attorney General to prescribe a fee schedule for the filing of applications under the legalization program. It is the understanding of the Conferees that the fee level should be sufficient to cover the costs of processing applications and should be comparable to those charged for aliens seeking entry into the United States as immigrants." That is exactly what we did, meeting the full intent of Congress. If both could be incorporated in the record, I would appreciate it.

[The information of Mr. Nelson follows:]

The Senate bill provided a minimum fee of $100 per alien to file an application for legalization. The House amendment established a maximum fee of $75 for individuals and $175 for families.

The Conference substitute requires the Attorney General to prescribe a fee schedule for the filing of applications under the legalization program. It is the understanding of the Conferees that the fee level should be sufficient to cover the costs of processing applications and should be comparable to those charged for aliens seeking entry into the United States as immigrants.

LEGALIZATION FEES FOR TEMPORARY RESIDENCE

INDIVIDUAL:	$185
FAMILY:	
PRINCIPAL:	$185
SPOUSE:	$185
FIRST CHILD UNDER 18:	$ 50
OTHER CHILDREN UNDER 18:	$ 00
FAMILY MAXIMUM:	$420

FEES FOR IMMIGRANT VISAS

INDIVIDUAL:	$185
FAMILY:	
PRINCIPAL:	$185
SPOUSE:	$185
CHILDREN:	$185 EACH

FEE FOR SAMPLE FAMILY OF TWO ADULTS AND THREE CHILDREN UNDER 18

LEGALIZATION:	$420
IMMIGRANT VISA:	$925

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-1000

IMMIGRATION REFORM AND CONTROL ACT OF 1986

OCTOBER 14, 1986.—Ordered to be printed

Mr. RODINO, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1200]

PAGE 92

LEGALIZATION APPLICATION FEES

The Senate bill provided a minimum fee of $100 per alien to file an application for legalization.

The House amendment established a maximum fee of $75 for individuals and $175 for families.

The Conference substitute requires the Attorney General to prescribe a fee schedule for the filing of applications under the legalization program. It is the understanding of the Conferees that the fee level should be sufficient to cover the costs of processing applications and should be comparable to those charged for aliens seeking entry into the United States as immigrants.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

SECTION 201 (c) 7 (A)

"(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

"(B) USE OF FEES.—The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section."

Information for Employers About The New Immigration Law

The Immigration Reform and Control Act of 1986 will affect all American employers. The Immigration and Naturalization Service (INS) is in the process of preparing regulations and other materials to implement this law. More detailed information and forms will be available in the near future. Until then, this fact sheet will address some issues such as:

- What do I do now?
- What about workers hired before the law passed?
- How do I deal with illegal workers who may qualify to be legalized?

Good faith and common sense in the hiring process can accomplish the goals of the Immigration Reform and Control Act of 1986.

General Principles for Employers:

- Commit to employ only U.S. citizens and aliens authorized to work in the United States. This is America's policy and should be yours as well.
- Consider displaying the attached poster to inform your workforce and job applicants of your support of this national policy.
- Follow the same procedures for *all* new hires.
- Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

Interim Procedures for Employees Hired After November 6, 1986, the date the Immigration Act became law.

From now until June 1, 1987 you should inform, either verbally or in writing, each new job applicant that you:

- Hire only United States citizens and aliens lawfully authorized to work in the United States.
- Will require all new employees to complete the designated employers verification forms when they become available. A one-page model draft form is attached for your information. Final forms will be available by June 1, 1987, when the eligibility verification procedures become effective.

You should ask each *new person hired* the following questions:

1) Are you a U.S. citizen?

2) If not, are you an alien lawfully authorized to work in the United States?

We suggest that you note his or her answers on your employment records. There is no requirement to review any documentation at this time.

After June 1, 1987, follow these procedures:

- Hire only United States citizens and aliens lawfully authorized to work in the United States.
- Continue to advise all new job applicants of your policy to such effect.
- Require all new employees to complete and sign the verification form designated by INS to certify that they are eligible for employment.
- Examine documentation presented by new employees, record information about the documents on the verification form, and sign the form.
- Retain the form for three years or for one year past the end of employment of the individual, whichever is longer.
- If requested, present the form for inspection by INS or Department of Labor officers. No reporting is required.

Considerations Regarding Employees Hired before November 7, 1986.

- There is no requirement to verify status of employees hired before November 7, 1986, but if you choose, you can do so as described in the prior section. If you choose to verify status of pre-November 7, 1986 hires, you should do so for *all* employees.
- No employer sanctions penalties can be imposed against you for merely retaining an illegal alien in your workforce hired before November 7, 1986.
- The fact that an illegal alien was on your payroll before November 7, 1986, does not give him or her any right to legally remain in the United States. Unless such alien is legalized or otherwise obtains permission from the INS to remain in the United States, he or she is subject to apprehension and removal.

Advice To Employers Regarding Employees or Applicants Known to be Illegal Aliens.

Under the new law certain illegal aliens may apply to the INS for legal resident status:

- Legalization program — Residents in the United States since January 1, 1982 in unlawful status may apply beginning May 5, 1987.
- Special Agricultural Worker (SAW) Program — Field workers in perishable agricultural commodities for a 90-day period, from May 1, 1985 - May 1, 1986, may apply beginning June 1, 1987.

Various voluntary organizations, churches, state or local government agencies, unions, business organizations, community groups, growers associations and individuals will be designated by the INS to advise aliens and help them prepare their applications.

You Should:

- Advise an undocumented alien that legalization and SAW assistance is available from an INS designated entity.
- Assist past and present employees who may qualify by providing documentation of employment history. Employment documentation furnished by employers and presented by legalization applicants will be used only to determine the applicant's eligibility and will not be used by the government against the employer except in cases of application fraud by the employee.

You May Ask the Illegal Alien the Following Questions:

1. Do you claim to qualify for the legalization provisions of the new immigration law?
2. Do you intend to apply for legal status and seek interim work authorization from INS?

If the illegal alien's answers are in the affirmative you may hire the alien without fear of penalty until September 1, 1987. The fact that the alien intends to apply for legalization or SAW status should be noted on the verification form (sample attached) designated by the INS when it becomes available.

For More Information

Further information will be distributed in future months. Please check your telephone directory for *Ask Immigration*. This is available through most local INS offices. Additional information will be available through local community organizations and the news media, or write to:

Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Attention: Employer Facts

The American Policy is our Policy:

We Hire Only U.S. Citizens
and
Lawfully Authorized Alien Workers

Provided by:
The Immigration and Naturalization Service
Washington, D.C. 20536

EMPLOYMENT ELIGIBILITY VERIFICATION

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Maiden
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)		Social Security Number	

I attest, under penalty of perjury, that I am (check a box):

☐ A citizen or national of the United States.
☐ An alien lawfully admitted for permanent residence (Alien Number A ____________________).
☐ An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A ____________________ or Admission Number ____________________, expiration of employment authorization, if any ____________________).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)

PREPARER/TRANSLATOR CERTIFICATION (If prepared by other than the individual) I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature		Name (Print or Type)	
Address (Street Name and Number)	City	State	Zip Code

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Examine one document from those in List A and check the correct box, *or* examine one document from List B *and* one from List C and check the correct boxes. Provide the ***Document Identification Number*** and ***Expiration Date***, for the document checked in that column.

List A
Identity and Employment Eligibility

☐ United States Passport
☐ Certificate of United States Citizenship
☐ Certificate of Naturalization
☐ Unexpired foreign passport with attached Employment Authorization
☐ Alien Registration Card with photograph

Document Identification
# ____________________

Expiration Date (if any)
____

List B
Identity

☐ A State issued driver's license or I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes.
(Specify State) ____________________)
☐ U.S. Military Card
☐ Other (Specify document and issuing authority)
____

Document Identification
# ____________________

Expiration Date (if any)
____

and

List C
Employment Eligibility

☐ Original Social Security Number Card (other than a card stating it is not valid for employment)
☐ A birth certificate issued by State, county, or municipal authority bearing a seal or other certification
☐ Unexpired INS Employment Authorization
Specify form
# ____________________

Document Identification
# ____________________

Expiration Date (if any)
____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine, relate to the individual named, and that the individual, to the best of my knowledge, is authorized to work in the United States.

Signature	Name (Print or Type)	Title
Employer Name	Address	Date

Form I-9 (03 20 87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code. Section 1324A. It will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Nationality Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form may be a violation of 8 USC §1324A and may result in a civil money penalty.

Section 1. Employee's/Preparer's instructions for completing this form.

Instructions for the employee.

All employees, upon being hired, must complete Secton 1 of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number *or* Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees must sign and date the form.

Instructions for the preparer of the form, if not the employee.

If the employee is assisted with completing this form, the person assisting must certify the form by signing it, and printing or typing their complete name and address.

Section 2. Employer's instructions for completing this form.

(For the purpose of completion of this form, the term "employer" applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment authorization, and:

- checking the appropriate box in List A *or* boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

NOTE: Employers are responsible for reverifying employment eligibility of aliens upon expiration of any employment authorization documents, should they desire to continue the alien's employment.

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Employers may photocopy or reprint this form, as necessary, for their use.

—RETENTION OF RECORDS.

After completion of this form, it must be retained by the employer during the period beginning on the date of hiring and ending:

- three years after the date of such hiring, or;
- one year after the date the individual's employment is terminated, whichever is later.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0136
Form I-9 (03/20/87)

Mr. **Nelson**. Going on, I might note here, too, because I know there is a lot of politicking on this issue of fees. But I might say that there has been extremely strong support from the American public and almost everybody in support of the level of these fees and the basis for them, with the exception of a very small minority of certain interest groups. And ironically, some of these same groups will themselves be providing service to those qualifying for legalization and will themselves be charging substantial fees for their own services, which is proper but I think it is important to note that.

Regarding the legalization, Mr. Chairman, we will be opening over 100 new offices as we have committed to. We have signed a great deal of the leases. We are moving forward. We fully anticipate to have all of these or almost all open by May 5th. We have ordered furniture. The printing is going forward. In addition, we will be hiring 1,900 additional personnel; many of those have been selected, and we are going forward with it.

A training program is underway, and there will be increased training during the month of April. So, again, we will be ready to go as indicated.

Similarly, automation efforts are going forward to meet the requirements of processing the several million people that we anticipate, and we are pleased with the efforts there so that we can promptly and properly process these applications and also be sure we do the appropriate record checks for criminal history, public charge information and so forth. So that is going forward.

In addition, one of the concerns many expressed is that people might in some cases use fraudulent documents. We, of course, hope that is not the case, but as mandated by the legislation, we will take appropriate action to detect fraud and to take appropriate prosecution and other action involved.

Turning to the enforcement aspects, as you know, under the bill there is an increase of border patrol agents. We anticipate under the budget, if approved, for 1988 that we will be hiring 1,100 new border patrol agents by the end of fiscal year 1988, a significant increase and, of course, in addition to the earlier increase in 1985 of a similar number.

Regarding employer sanctions, clearly the key part of the legislation, one thing I would like to really emphasize is that we are making extreme efforts to work with employers, with labor unions, community groups and others to gain voluntary compliance. We are not interested in penalties; we are interested in employers hiring U.S. citizens and legal aliens, not hiring illegal aliens. It is as simple as that.

We have created a new office, Assistant Commissioner for Employer and Labor Relations. We are setting up some 70 positions throughout the country in each of our districts and border patrol sectors to deal and work closely with that. In addition, of course, everybody is involved in that effort.

We are in the process of multi-publications, videotapes and other materials to get out to employers, to applicants for legalization, and all the other interested parties. A lot of that has already started, and there will be an increased effort as we build toward the formal implementation dates.

The forms for the employment verification, and I think you mentioned that in your opening comments and it is part of our testimony and submitted for the record, is a one-page form. We have had very good comments from groups such as the United States Chamber of Commerce, the AFL-CIO, and other groups. It is still submitted in a draft form where we solicit comments and input before that is finalized. We have utilized many of the suggestions. In fact, it is, we think, a simple, one-page form. We think it will work well. We still look forward to additional comments, and if we can simplify it further, we would certainly plan to do so.

Another topic that is of certain overriding importance is our relations and liaison with Mexico. We have had a series of consultations with the Mexican Ambassador here. I traveled to Mexico before Christmas and met with President de la Madrid and other Mexican high officials. Assistant Secretary Joan Clark of the State Department has done the same. We have had regular ongoing meetings. We have shared with them our regulations and procedures. We will continue to do that. We certainly have assured the Mexican Government publicly and privately, including the Secretary of State, the Attorney General and others, that this immigration reform legislation is a result of a long-term, bipartisan approach in the United States. It is not directed against Mexico, and that such legislation will not result in any mass deportations to Mexico. Rather, a shift from illegal to legal immigration is in the mutual interest of Mexico and the United States and, I might add, to all countries. That is the theme of our immigration reform, and I think the Mexican officials have responded very well, and we will continue working with them and we will continue our bilateral discussions.

Regarding public information, I have touched on some of this already. We have issued, and I will submit again for the record, a copy of an Employer Information Brochure that has been released the last week—again, in draft form. After a few comments, we expect to issue it formally probably in another week or two with as many as half a million copies going out giving some specific information to employers. Again, that form is related to that, and that will certainly be available for distribution by the June 1 start-up date.

An extensive public information campaign is already under way. We have had over 300 meetings throughout the United States with all forms of interest groups—employers, labor unions, community groups, including illegal aliens. Those have gone well; those are continuing.

The SAVE program, Systematic Alien Verification for Entitlements, is another important part of this legislation. We will be putting our regulations together shortly. The start-up date for that under the legislation is October 1, 1987, and we will be ready for nationwide implementation by that date.

This system has worked well on a voluntary basis. It is an important adjunct to the entire enforcement of the immigration laws.

Other provisions, the H-2 Temporary Agricultural Worker Program, I will defer that to the other gentlemen, Mr. Baroody and Mr. Wilson.

Overseas processing of special agricultural workers, we are working closely with the State Department and, again, have conferred with Mexico particularly. Consular posts abroad will handle the processing of these cases, and that process is moving forward.

One of the issues, Mr. Chairman, that comes up is the work authorization issue for those who might qualify for legalization. In our new regulations, we have set forth, we think, some very fair procedures that when somebody files their application for legalization, they will receive a receipt for the fee paid; and they will either receive an interview date within 30 days, or if they cannot be interviewed within 30 days because of our work load, they will receive a temporary work authorization. So basically, anybody can get a work authorization if they have a prima facie case within 30 days of filing.

In addition, we have indicated to employers that if they hire somebody that, although illegal, apparently would qualify for the legalization program, if they verify the fact that the person says they qualify and will file, that employer will not be penalized up until September 1, giving them the 3 or 4 months to get the application filed. So we think we have covered that fairly.

I might touch on another part which I think is very important, particularly, Mr. Chairman, with your initiative on welfare reform, that the Immigration Reform Act is really a tremendous adjunct and corollary to welfare reform and job development. I think this is important to keep in mind.

We have been working on a program known as the LAW program, Legally Authorized Workers, and we are hoping to expand that so we can work with employers, labor unions and others to be sure that jobs are available for American citizens and legal aliens, many of whom are disadvantaged, many of whom are on welfare or other benefits. So I think there are some tremendous job development aspects that we need to keep in mind.

Another important part of the immigration bill that has not received as much attention are the provisions dealing with criminal aliens and the determination of Congress that we remove criminal aliens from the street, from the community and from the United States. We are taking a number of steps set forth in the testimony with pilot programs and working with cities and States to deal with the criminal aliens, and particularly the expeditious deportation of those people.

Senator KENNEDY. I will give you another couple of minutes.

Mr. NELSON. Yes, sir. I will wrap up.

Yes, I will conclude at this point. Mr. Chairman, I am encouraged and optimistic about the ability of the Immigration Service to complete its mission under this new program. There are a lot of difficult tasks and a lot of time pressures, but we are basically on schedule in our efforts to date to implement the Immigration Reform and Control Act. Publishing the regulations last week was a significant step forward in that regard.

We appreciate the input that we have received from interested persons, organizations, members of Congress, and Federal agencies. As noted, we would anticipate issuing the interim regulations and the appropriate forms and instructions by the beginning of May in order to be ready for the opening of legalization offices on May 5th and the start of the actual enforcement of employer sanctions and the SAW worker program on June 1.

Thank you, Mr. Chairman.

[The statement of Mr. Nelson follows:]

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
STATEMENT OF THE COMMISSIONER
ALAN C. NELSON
BEFORE THE SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS
U.S. SENATE

MARCH 24, 1987

Mr. Chairman and Members of the Committee:

I am pleased to appear before you to discuss the implementation of the Immigration Reform and Control Act of 1986 (P.L. 99-603). Before discussing the initiatives and progress of the Immigration Reform and Control Act implementation to date, let me take this opportunity to highlight the Administration's 1988 budget proposal for the INS budget submitted to Congress in January 1987.

As you know, the Administration's 1988 budget request totalled $838,828,000 and 15,453 positions for the Immigration and Naturalization Service. When funds from the nonappropriated Immigration User Fee (74.0 million) and Legalization ($144.4 million) accounts are included, total resources available to the agency will exceed $1 billion in 1988. This is the first budget which contains full-year funding for the implementation of the landmark Immigration Reform and Control Act of 1986. This legislation provides what the country has needed for years--a credible large-scale enforcement effort to control illegal immigration, employer sanctions, a humane amnesty program, and new agricultural workers programs.

The budget request for INS has grown from about $440 million in 1982 at the beginning of the Reagan Administration to a request for over $1 billion in 1988, representing a 140% increase representing unprecedented increases in a government program. As you can imagine, the resources requested are critical for the Service to fully implement the Immigration Reform and Control Act and we remain hopeful that our budget request will be approved in as timely a manner as possible. Let me now discuss the following key initiatives of the reform legislation.

I. Legalization

Proposed regulations for implementation of the Immigration Reform and Control Act of 1986 have been completed and published in the Federal Register.

Recently, INS took the highly unusual step of releasing preliminary draft regulations to the general public to provide an opportunity for comment and suggestions which we could consider in preparing the proposed regulations for publication in the Federal Register.

We have received a large number of suggestions; if stacked in a pile they would stand two feet high and number several thousand pages. We have now completed work on the second stage of the process. All comments have been thoroughly reviewed and evaluated. These significant new federal regulations have been reviewed by many federal agencies and the Office of Management and Budget; OMB has issued its approval, authorizing publication in the Federal Register. Following publication there will be a 30 day period ending on April 20, 1987. We anticipate issuance of these regulations in May 1987.

I doubt that any new federal regulations have been prepared with more public comment and with greater opportunity for public participation than these immigration regulations. The conclusions we have reached in preparing these proposed regulations, which are subject to still further modifications following the additional comment period, have been helped by the input we have received to date from interested persons and organizations as well as by the federal agencies involved.

Fees

During this stage of the regulatory process, INS has established a fee structure for the legalization and special agricultural worker programs. The fee for temporary resident and special agricultural worker status will be $185 per application. Children, under the age of 18 years who are living at home will pay $50 per application, with a cap of $420 for each family unit.

Such a fee structure accomplishes several key objectives:

1. It protects the taxpayer by ensuring that the costs of the program are covered by the anticipated revenue generated;
2. It assures a reasonable fee based on service provided;
3. It compares favorably with the cost of $185 charged for an immigrant visa. It is sound policy and basic fairness that the illegal alien seeking legalization pay a fee equivalent to the legal alien seeking admission to the U.S.

Specifically, the total fee of $185 for an immigrant visa includes $150 payment to the Department of State and $35 payment to INS. Thus a family of five would pay $185 each or a total of $925, as compared with $420 for our legalization process.

In summary we have established a fee structure that is reasonable and fair, assures that the taxpayer will not assume the burden of this program, and is within reach of persons who are eligible.

It should be noted that there is strong support for this fee structure except from a very vocal minority of interest groups. Ironically, some of these same groups will be providing services to those qualifying for legalization and will themselves be charging substantial fees for their own services.

Offices

Over 100 legalization offices will open on May 5, 1987. Orders for system furniture for the legalization offices have been placed through the Bureau of Prisons totaling over $15 million. In addition, nearly $4 million in printing orders have been placed through Bureau of Prisons and GPO.

A total of 1,900 personnel will be hired to staff INS legalization offices. Of this number, many in-service personnel and reemployed annuitants have already been selected, while recruitment efforts for temporary hires are underway. Although waivers of full field investigations for new hires have been approved by the OPM, legalization personnel will undergo strict preappointment screening. A training program for legalization office personnel has also been developed. Training will be provided simultaneously at local offices beginning April 20, 1987.

Automation

To ensure the legalization program has the automated support necessary for successful implementation, INS is contracting for the purchase of microcomputers, development of software programs, data entry and support functions at the four regional processing facilities.

Application software systems are being developed to support application and fee processing at the local and regional levels. A centralized "Legalization Adjustment Processing System" is being designed to provide casework support in the processing of applications for legalization. This system will provide automated output to allow checks against other-agency systems (FBI, CIA, etc.), as well as other INS systems, to ensure that applicants for legalization or special agricultural workers status do not have criminal histories or are otherwise disqualified by provisions of the Act.

The Intelligence Program has also begun to structure the regional document analysis units to assist in the detection of fraud in the legalization program and to increase the staff of the INS Forensic Document Laboratory. Position descriptions and resources have been provided to INS regions to establish the document analysis units, and six additional positions were announced to augment the Forensic Document Laboratory staff.

INS is aware of the complexity and magnitude of the legalization program and is monitoring closely those aspects which, if not accomplished in a proper or timely manner, could jeopardize the success of the program. INS also remains aware of the problems involved with controlling the flow of applications to ensure the orderly and timely processing of applications and the efficient use of personnel throughout the program. We are taking steps to ensure that INS will be able to effectively manage the workload throughout the program.

II. Enforcement Enhancement

One of INS' key initiatives to improve its control of U.S. borders is the hiring of additional Border Patrol agents, including approximately 1,100 new hires during FY 1987 and 1988. Since early January, the Service has hired 150 Border Patrol agents who are currently attending basic training at the Federal Law Enforcement Training Center in Glynco, Georgia.

III. Employer Sanctions

One of the major provisions of the new Act is the sanctions placed on employers who knowingly hire illegal aliens. The Service is giving heavy emphasis to the need to gain voluntary compliance through employer and labor cooperation and information programs complemented by traditional enforcement.

In developing the employer sanctions program, INS is concerned about providing employers with clear and complete information on the operations and requirements of the program. The education of employers and the general public regarding the requirements imposed by the employer sanctions provisions is the first step in ensuring the program's success. It is the Service's intention to provide employers every reasonable opportunity to understand the new law before we begin full enforcement activities.

The Service is committed to providing public education with the goal of establishing a well-informed business community regarding the sanctions provisions of the Reform Act. The Office of Employer and Labor Relations has been created within INS for this purpose. Seventy-one positions will be assigned to this unit Servicewide.

Office representatives are currently working with other programs within INS to produce publications, videotapes and other materials to explain employer sanctions provisions. Scripts for our employer sanctions videotapes have been drafted. Production of the videotapes is now scheduled for the end of March. Public input was sought by INS prior to the actual publication of employer sanction regulations as part of the Service's public outreach efforts. We anticipate issuance of the final regulations by May.

IV. Employment Verification Form

The employment verification form requires the employee to provide brief information about themselves. This information the employer would include such things as name, address, and birth date. The employer then must note which verifying documents have been examined.

We have gone to considerable effort to make the form as clear and as simple as possible. We have received comments and suggestions from many individuals and organizations, including the U.S. Chamber of Commerce, the AFL-CIO and others.

We have utilized many of their suggestions, gone through several drafts and have developed a form, which we believe fills the need without being complex. It is only one-page for the employer and employee to fill out. The employee simply checks the appropriate box indicating if they are a citizen, a legal permanent resident or an alien authorized to work and signs that under penalty of perjury. The employer certifies that the employee showed documents verifying his or her identity and documents indicating the legal right to work in the United States.

The employer affirms in writing that the documents have been examined, that they appear to be genuine, that they relate to the person who presents them, and that, to the employer's knowledge, the person being hired is eligible to work in the U.S.

We welcome further comments and if we can simplify the form further, we will do so. A copy of the I-9 form is attached for your information.

V. Liaison with Mexico

Although the provisions of the Reform Act will have an impact on the nationals of many countries, the greatest impact will be felt by Mexican citizen who are now thought to comprise approximately 55 percent of the resident illegal alien population. Because this impact will also be felt in Mexico, the Reform Act states, as a sense of Congress, that consultations should be held with Mexico.

The Administration has sought to involve and inform the Government of Mexico in its implementation planning efforts. We have briefed the Mexican Ambassador to the United States on the provisions of the Act and relevant issues for bilateral discussion. In addition, at the request of Charles Pilliod, U.S. Ambassador to Mexico, I met with President Miguel de la Madrid and a number of other high-level Mexican government officials in Mexico City on December 18 and 19, 1986, to discuss provisions of the Act, plans for implementation and bilateral issues of concern such as the repatriation of Mexican nationals, mutual concerns over border violence and possible initiation of preclearance in Mexico. Ambassador Pilliod and myself assured the Mexican Government that the immigration reform legislation was a long-term, bi-partisan measure, not directed against Mexico and that such legislation would not result in mass deportations to Mexico. It was noted that a shift from illegal to legal immigration is in the mutual interest of both the United States and Mexico.

To facilitate continued bilateral discussions between the United States and Mexico on border issues, I have appointed a Special Representative located in El Paso, Texas, who reports directly to me. The Administration will continue to provide additional reports to the Congress on liaison with Mexico.

VI. Public Information

The Reform Act mandates public education campaigns to inform the public of employer sanctions provisions and the legalization program. In this regard INS has elicited extensive public comment on its proposed procedures prior to publication of regulations, forms and informational materials. INS's consideration of public views, will result in less need for revision, and less misinterpretation and confusion as the program evolves.

INS has developed and implemented a broad based public information program on an interim basis through activities throughout the country.

An Employer Information Brochure has been developed and a draft of this document was distributed at a national press conference on March 16. In addition, a brochure has been developed in draft form on Legalization; and a brochure on Seasonal Agricultural Workers is in the final stages of preparation. Public Information has also developed over 20 messages on the new immigration law to be used in the new 800 telephone number system operational next month. Production is in the final stages for a series of national public service radio and television announcements.

This month a primary contractor will be selected to develop a national public information campaign designed to inform and educate a variety of audiences including employers, illegal aliens, and the general public on the requirements of the new immigration law. Regionally, effective public information campaigns have been launched throughout the country. The following is a summary of these activities.

VII. SAVE Program

A major component of the new law is the requirement that agencies verify the documentation and status of alien applicants for public benefits such as public assistance, food stamps, educational assistance, housing and unemployment compensation. Over the past several years, INS has developed an automated on-line system known as Systematic Alien Verification for Entitlements (SAVE). This highly adaptable system will be ready for nationwide implementation by October 1, 1987.

To meet the timeframes specified by the Reform Act and to be more efficient and cost effective, INS will create a separate data base of records from the existing automated Central Index System, and competitively procure storage and network access capability from a commericial vendor. The drafting of an action plan and functional requirements is underway. In addition, INS has developed a 64-hour training course and hiring plan for the document verification personnel who will staff designated INS field offices.

VIII Other Provisions

H-2 Temporary Agricultural Worker Program

The new law streamlines the existing H-2 program for work in agriculture to allow employers easier access to foreign workers when U.S. workers are unavailable and when the importation of foreign workers will not adversely affect the wages and working conditions of American workers similarly employed.

In its lead role, the Department of Labor has circulated draft regulations regarding labor certification of H-2 agricultural workers. These draft regulations are currently under interagency review. In addition to the development of labor certification regulations, INS is currently revising regulations concerning the processing of H-2 petitions. Publication of proposed rules in both areas is scheduled for late March.

Overseas Processing of Special Agricultural Workers

The processing of SAW applications, from receipt of the application through the collection and review of documentation and final approval or denial, will substantially follow the same pattern as established procedures for the processing of immigrant visas.

Consular posts abroad will handle inquiries, provide instruction, and distribute forms to prospective SAW applicants. Those consular posts which are designated as Overseas Processing Offices (OPO's) will also receive, accept fees for, and have full authority to approve or deny applications for SAW benefits and OPO decisions will be subject to INS appellate oversight. Regulations and procedures are to be promulgated by the Secretary of State which are in accordance with the burdens of proof and evidence and other requirements as set forth in 8CFR 210.

Work Authorization

Work authorization during the preapplication and application periods has been addressed in several ways. Generally, both legalization and SAW applicants will receive work authorization at the time of interview, provided that an interview can be scheduled within 30 days of the filing of the application. If, at the time of filing, it appears that no interview date is available within

30 days, the applicant will be given work authorization until the interview date. Work authorization granted at the time of interview will remain in effect until a final determination on the application is made by a regional processing facility.

In addition, the Service has established a special rule to deal with hiring during the preapplication period, to relieve the pressure on INS legalization offices during the first phases of the application period, and to allow prospective applicants sufficient time to gather the documentation needed to support an application. Under this rule, an employer may hire an alien until September 1, 1987, without any fear of sanctions being imposed, so long as the alien attests to the employer that he or she has either applied for, or intends to apply for, legalization or SAW benefits. No individual work authorization document from INS is required in such a situation.

Legally Authorized Worker Program

Now that the Employer and Labor Relations Program has been firmly established, an officer has been assigned full-time to develop, implement and monitor the Legally Authorized Worker (LAW) Program. During the next several months issues will be studied and initiatives will be developed to seek the active cooperation of the private and public sectors to effectively replace illegal and unauthorized workers with U.S. citizens and aliens legally entitled to employment. The LAW Program is designed to reduce both domestic unemployment and illegal immigration.

Alien Criminal Apprehension Program (ACAP)

On December 15, 1986, INS implemented a new program designed to intensify our efforts in the war against criminals. On that date, INS offices nationwide set into action the Alien Criminal Apprehension Program (ACAP), an aggressive pilot project with one objective: to remove alien criminals from the street, from the community, and ultimately, from the United States in as expeditious a manner as is possible, consistent with due process requirements.

Since the December 15th directive, our Regional and District Offices have made important strides in the following areas:

1. Designation of regional coordinators to ensure effective participation of all Districts and Sectors in this vital program.

2. Designation of a headquarters working group to review the proposed regulations relating to the alien criminal provisions of the Immigration Reform and Control and Anti-Drug Abuse Acts of 1986.
3. Designation of New York, Miami, Chicago and Los angeles as the four INS District Offices to take part in the four-city pilot project mandated by Subtitle M of the Anti-Drug Abuse Act. Memorandums of Understanding between INS and state and local officials are being formulated at this time.
4. Enhancement of automated systems for field offices including interface with state/local criminal information systems, in order to improve INS' tracking capability and facilitate agent casework with regard to alien criminals.
5. Designation of INS as a full partner in the Organized Crime Drug Enforcement Task Force (OCDETF).

Immigration Benefits

The Immigration Reform and Control Act of 1986 makes changes in a number of provisions concerning the admission to and authority to live in the United States. The Service has published interim regulations which will implement certain sections of the Reform and Control Act, including the updating of the registry date, the restrictions on adjustment of status, and the adjustment of status of certain Cuban and Haitian nationals. We continue to meet on a systematic basis with the Department of State concerning draft regulations on the adjustment of status of certain employees of international organizations and their family members. The Department of State has concluded its registry of applications for the 10,000 nonpreference immigrant visas to be issued in FY 1987 and 1988 and is commencing the normal administration processing of these applications.

Identification of Facilities to Incarcerate Illegal Aliens

Provision is made for the Department of Defense to provide the Attorney General with a list of Defense facilities that could be made available to the Bureau of Prisons for the detention of aliens. The Department of Defense submitted a report to the Attorney General on January 29, 1987 on facilities of the Department of Defense for housing civilian prisoners. The report responded to three separate but similar, legislative requirements and is under consideration within the Department of Justice.

Conclusion

I am encouraged and optimistic about the ability of the Service to complete its mission under this new program. INS remains on schedule in its efforts to implement the Immigration Reform and Control Act. Publishing the proposal regulations last week was a significant step. INS has remained committed to its forthright endeavors to receive public comment and participation through the release of our immigration regulations. We commend and appreciate the input and support we have received to date from interested persons, organizations, members of Congress, and federal agencies.

We anticipate issuing interim regulations and the appropriate forms and instructions by the beginning of May. This will allow them to be in place when legalization offices open May 5, 1987, and for the start of actual enforcement of employer sanctions on June 1, 1987.

Thank you Mr. Chairman and members of the Committee, I appreciate this opportunity to discuss our implementation progress and look forward to other opportunities in the future.

Senator **Kennedy**. Mr. Disler.

Mr. **Disler**. Mr. Chairman, members of the committee——

Senator **Thurmond**. Would you excuse me just a minute.

Senator **Kennedy**. The Senator from South Carolina.

Senator **Thurmond**. I have to go back to the Armed Services. We are having a full hearing on SDI. I would ask unanimous consent that my opening statement be put in, and then I have a few questions for Mr. Nelson to answer for the record.

Senator **Kennedy**. Fine. So ordered, Senator.

[Prepared statement follows:]

Prepared Statement by Senator Strom Thurmond

This afternoon, the Senate Judiciary Committee will receive testimony on the Immigration and Naturalization Service authorization, which is part of the Department of Justice Appropriation Authorization Act, for fiscal year 1988, S. 517, introduced by the distinguished Chairman, Senator Biden, and myself at the request of the administration.

The need for reduction in Federal budget deficits requires that all Federal Government agencies evaluate priorities, and, of course, the Immigration and Naturalization Service of the Department of Justice is no exception. Nonetheless, control of our nation's borders and implementation of the new Immigration Reform and Control Act are important functions, and the role of the Immigration and Naturalization Service in these pursuits must not be compromised. I believe that the Congress must appropriate sufficient funds for the government to carry out the mandate set by the new immigration laws.

In reviewing the statements submitted by Commissioner Nelson and the other Administration witnesses, it is evident that the agencies before the committee today, all of which will have a role in implementing the new law, are working quickly to fulfill their responsibilities under the new immigration law. In this regard, the Immigration and Naturalization Service has just announced proposed rules under the new law.

When adopted, these rules will provide direction to the agencies in many important areas, most notably in processing applicants for lawful temporary residence status under the Agricultural Worker Program, implementation of the Legalization program, and drafting procedures to verify employment eligibility and to impose sanctions on those employers who fail to comply with the new law.

We are pleased to have with us a distinguished panel of administration witnesses who will discuss implementation of the new immigration legislation and the proposed appropriation for the Immigration and Naturalization Service. I would like to commend the leadership of Senator Alan Simpson, and authority on immigration who, along with Senator Ted Kennedy, was instrumental in drafting the legislation we are discussing today. We welcome you, Mr. Nelson and other witnesses, and look forward to reviewing your testimony.

Questions for Mr. Nelson, Administration Witness, From Senator Thurmond

1. If Congress fails to appropriate sufficient funds to implement the programs for which your agency has responsibility, what impact do you believe this would have on your ability to fulfill your role under the new immigration law? Which programs and responsibilities would be particularly affected?

Answer. If Congress fails to appropriate sufficient funds to implement the Service's programs, there will be a serious shortage of personnel and resources available to implement major elements of the Reform Act. The Legalization program would be funded from application fees and would go on as planned. The enforcement and agricultural programs would be seriously curtailed and could only operate in a scaled-down form.

Since the law requires that the Special Agriculture Program open and operate during a specified period of time when applications would be received from alien workers, be processed and be approved/disapproved, this program would have to be given a higher priority to receive available resources.

It is unlikely that there could be any meaningful enforcement of the employer sanctions program if resources were cut from our request. Since this new provision was meant by Congress to operate in tandem with legalization by discouraging additional aliens from entering the country, lack of enforcement would encourage aliens to cross the border and seek jobs from employers who would have a very low likelihood of being detected and prosecuted.

The Reform Act directs the Service to expedite the deportation of criminal aliens. A shortage of resources would not permit us to carry out the type of effort envisioned when this provision was added to the law. Criminal aliens (particularly drug offenders) would be allowed to remain in the country, adding to criminal justice costs, primarily at the state and local levels. Those released from prison would be likely to commit additional crimes, victimizing citizens and permanent legal resident aliens.

The major expansion of the Border Patrol could not take place. Participation in "Operation Alliance" would have to be scaled back. Existing Patrol resources would be strained by larger numbers of aliens seeking to enter the country for jobs available from employers who would not be seriously threatened by employer sanctions.

Another extremely serious problem exists. INS has received approval from OMB to "forward fund" a number of programs in anticipation of supplemental funding. If sufficient funds are not approved by Congress, most of what has been accomplished would have to be suspended in order to attempt to remain within approval appropriations. All INS base program operations in the fourth quarter of this fiscal year would be affected. Since so much of INS' resources is related to personnel salaries and benefits, furloughs and reduction-in-force would be the result due to the lack of funds if sufficient supplemental funding is not received.

2. Legislation such as the Immigration Reform and Control Act has an impact on many entities within the Federal Government, as is evidenced by the presence of witnesses from four different agencies today. What steps are being taken to coordinate the efforts of your agency with that of others to ensure that this legislation is successfully and efficiently implemented?

Answer. The Immigration and Naturalization Service, as the major implementing agency for immigration reform, serves in a coordinating role for other involved agencies and divisions within and outside the Department of Justice. An Interagency Coordinating Group, chaired by Immigration and Naturalization Commissioner Alan C. Nelson, was formed in mid-December, 1986. The working group meets biweekly to discuss those issues of immigration reform which affect member agencies. The Interagency Coordinating Group consists of Departments of State, Labor, Agriculture, Health and Human Services, OMB, and INS.

3. The new immigration law will affect eligibility for programs already in existence such as Social Security, Medicaid, and Food Stamps. What specific measures are being taken to integrate or to bar (where mandated under the law) legalized aliens under these existing programs?

Answer. The Immigration and Naturalization Service has established several interagency work groups to develop specific regulations regarding alien participation in federally subsidized entitlement programs. Each designated federal agency is responsible for defining in their own regulations those newly legalized aliens who are eligible for benefits and those who are not.

Aside from regulatory changes, alien participants will be required to present documented evidence of their status in the United States. This documentation shall be verified through the Systematic Alien Verification for Entitlements (SAVE) system scheduled to be available October 1, 1987. Documents issued to newly legalized aliens specifically state, "Bearer entitled to reside and work in the United States until card expires. Not eligible for federally funded assistance programs except as provided by P.L. 99-603."

Senator KENNEDY. Mr. Disler.

Mr. DISLER. Mr. Chairman, I have a written statement that I respectfully request be entered in the record. I will keep my oral remarks down to about 5 minutes.

I want to thank the committee for the opportunity to explain the administration's efforts thus far to implement the anti-discrimination provisions of the Immigration Reform and Control Act of 1986. The Act makes it an unfair immigration-related employment practice to discriminate against an individual, other than an unauthorized alien, in hiring, discharging, recruiting or referring an individual for a fee because of such individual's national origin, or in the case of a citizen or intending citizen because of that individual's citizenship status.

As a means of providing government enforcement of those prohibitions, the Act created the position of Special Counsel for Immigration-Related Unfair Employment Practices located within the Department of Justice.

Our earlier opposition to inclusion in the bill of these non-discrimination provisions and creation of a special counsel was based largely on our assessment that any potential discrimination that might occur after enactment was already adequately addressed by existing law. Nonetheless, now that these provisions have become law, the Department has been moving to establish the necessary structure for the Special Counsel mechanism.

I wish at the outset to put to rest any fears that we lack commitment in this endeavor. The fact is that the administration, the Department of Justice and all of us involved in this project are dedicated to the full and faithful implementation of the new legislation, including vigorous enforcement of its prohibitions.

Now, regarding establishment of the Special Counsel mechanism, I understand that the search for a Special Counsel is in what we hope to be its final stages. We have requested funding for a 30-person office for the balance of this fiscal year and funding to support a doubling of the staff in fiscal year 1988, should that be needed. A few weeks ago, Attorney General Meese named a chief hearing officer to oversee the ALJ program. We have just published a notice of proposed rulemaking which sets out our proposal for the operating procedures and certain governing principles for the Office of Special Counsel and, to a certain extent, for the administrative Law Judges, the ALJs who will decide cases brought under the employment discrimination provisions of the Act. The proposed rule also describes the information that must be contained in written charges filed with the Special Counsel, along with other details about the way the office will function.

We are soliciting written comments from the public and would certainly welcome such comments from members of Congress and, obviously, members of this committee. We invite attention to each part of the proposal, and we stress—and I do wish to underline this—that we consider the comment process as a valuable opportunity to receive public input.

Let me conclude my oral remarks by noting that, as we have said in hearings held while this legislation was under consideration, and as we have said since enactment in various forums, as Assistant Attorney General Reynolds said when he released the proposed regulations, as we testified in a House oversight hearing, as the regulations say, and as I am saying now: The methods employers must use to verify an individual's entitlement to employment are not difficult. There is no excuse for an employer to deny employment to those legally entitled to it in order to avoid hiring an individual whose employment could lead to sanctions.

The Congress has determined that the threat of unfair employment practices is real enough to warrant the prohibitions included in the Act, and the Department is moving forward to put in place the mechanisms to enforce those prohibitions.

Thank you, Mr. Chairman.

[Prepared statement follows:]

STATEMENT

OF

MARK R. DISLER
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

Mr. Chairman and Members of the Committee:

I want to thank the Committee for the opportunity to explain the administration's efforts thus far to implement one specific part of the Immigration Reform and Control Act of 1986. As you know, the Administration strongly supported enactment of legislation designed to help us regain control of our borders. Because other Administration witnesses will be discussing other provisions of the Act, I will be limiting my remarks to the Administration's efforts thus far to implement the sections of the bill which prohibit certain forms of discriminatory employment conduct and establish a "Special Counsel" in the Department of Justice.

The Act makes it an "unfair immigration-related employment practice" to discriminate against an individual (other than an unauthorized alien) in hiring, discharging, recruiting or referring for a fee, "because of such individual's national origin, or in the case of a citizen or intending citizen... because of that individual's citizenship status". The Act excepts from these prohibitions (a) employers of three or fewer employees, (b) claims which are enforceable under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e, and (c) employment actions based on citizenship status where the employer must discriminate based on citizenship in order to comply with requirements imposed by statutes, regulations, executive orders, government contracts, or where the Attorney General determines citizenship status is essential for an employer to do business with a Federal, State, or local government agency or department.

As a means of providing government enforcement of these prohibitions, the Act created the position of "Special Counsel for Immigration-Related Unfair Employment Practices," located within the Department of Justice. The Special Counsel will receive charges of discrimination filed by private parties or Immigration and Naturalization Service officers, and determine whether the charges warrant filing an administrative complaint. When the Special Counsel determines that such action is justified, he or she may file a complaint with an administrative law judge seeking injunctive relief and, where appropriate, back pay or civil monetary penalties or both. Once the administrative law judge finds a violation and issues an order, the Special Counsel or charging party may file an action in federal court to enforce the administrative law judge's decision. Where the Special Counsel determines that the charge does not justify the filing of an administrative action, the Act gives the charging party the right to file his or her own action before an administrative law judge. Review of administrative law judges' orders may be had in the geographically appropriate federal circuit courts of appeals.

Our earlier opposition to inclusion in the bill of these nondiscrimination provisions, and creation of a Special Counsel, was based largely on our assessment that any potential discrimination that might occur after enactment was already adequately addressed by existing law. Nonetheless, now that these provisions have become law, the Department is moving to establish the necessary structure for the Office of the Special Counsel. I should at the outset put to rest any fears that we lack commitment in this endeavor. The fact is that the Administration, the Justice Department and all of us involved in this project are dedicated to the full and faithful implementation of the new legislation, including vigorous enforcement of its prohibitions.

Our initial effort has been to examine the series of questions associated with creating and organizing the Office of Special Counsel. With that effort, we have been studying the language of the law and its legislative history to determine precisely what cases come within the office's jurisdiction. For example, the Act excludes from its coverage employers who employ 3 or fewer employees. It also excludes national origin discrimination against an individual which is otherwise covered by Title VII of the Civil Rights Act of 1964. Accordingly, national origin discrimination claims against employers with 15 of more employees do not come under the Act, but are reached by Title VII.

Further, the legislative history reflects that the Act's antidiscrimination provisions are aimed principally at discrimination occasioned by an employer's efforts to avoid sanctions for hiring undocumented aliens. The overriding concern of legislators was that an employer would discriminate against anyone who looked or sounded foreign, or who is not a citizen, despite the fact that a denied individual may be lawfully entitled to work in this country and able to prove this fact with proper documentation.

As the Conference Committee Report noted, "the antidiscrimination provisions of this bill are a complement to the sanctions provisions, and must be considered in this context." The antidiscrimination provisions were adopted "because of the concern of some Members that people of 'foreign' appearance might be made more vulnerable by the imposition of sanctions. While the bill is not discriminatory, there is some concern that some employers may decide not to hire 'foreign' appearing individuals to avoid sanctions." H. Rep. 99-1000, 99th Cong., 2d Sess. 87 (1986). Indeed, "if the sanctions are repealed by joint resolution, the antidiscrimination provisions will also expire, the justification for them having been removed." Id.

The Judiciary Committee stated that (H.Rep. 99-682, Part 1, 99th Cong., 2d Sess. 68 (1986)):

> Numerous witnesses over the past three Congresses have expressed their deep concern that the imposition of employer sanctions will cause extensive employment discrimination against Hispanic-Americans and other minority group members. These witnesses are genuinely concerned that employers, faced with the possibility of civil and criminal penalties, will be extremely reluctant to hire persons because of their linguistic or physical characteristics.
>
> Representative Robert Garcia testified that "as a shorthand for a fair identification process, employers would turn away those who appear 'foreign', whether by name, race or accent."

Other portions of the legislative history further establish that the discriminatory acts Congress intended to prohibit are those in which the employer's actions are an attempt to avoid employer sanctions. For example, House Judiciary Committee Chairman Rodino emphasized this understanding on the House floor following issuance of the Conference Report. 132 Cong. Rec. H. 11148 (daily ed., Oct. 16, 1986).

It is against this backdrop that the President expressed his understanding of the antidiscrimination provision of the Act as requiring proof of intentional discrimination in order to obtain relief. This view is soundly based on the statutory scheme itself as well as its legislative history.

Indeed, the House Judiciary Committee stated, with respect to the private right of action, in its section-by-section analysis of the antidiscrimination provision: "[New Section 274B(d) a]uthorizes private action where the Special Counsel has not filed a complaint within 120 days based on a charge alleging knowing and intentional discriminatory activity or a pattern or practice of such activity." H. Rep. 99-682, Part 1, 99th Cong., 2d Sess. 93 (1986) (emphasis added). Further, in explaining the meaning of the term "pattern or practice" in the criminal sanctions portion of the Act, this Report stated that "the term 'pattern or practice' has its generic meaning and shall apply to regular, repeated and intentional activities, but does not include isolated, sporadic or accidental acts. The same interpretation of 'pattern or practice' has its generic meaning and shall apply when that term is used in this bill with regard to the injunctive remedy that may be sought by the Attorney General for recruitment, referral or employment violations, as well as for certain unfair immigration-related employment practices." *Id.* at 59 (emphasis added).

This view was reflected by proponents of the antidiscrimination provision and the several examples they gave to underscore the need for such a provision. Senator Levin's statement captures well the point (131 Cong. Rec. S11436 (daily ed. Sept. 13, 1985) (emphasis added)):

> Mr. President, two types of discrimination may result from employer sanctions. First, employers seeking to avoid the consequences of hiring illegal aliens may simply refuse to hire foreign looking or foreign speaking persons. This type of discrimination -- discrimination based really on national origin -- is already covered by Title VII of the 1964 Civil Rights

> Act which prohibits discrimination on the basis of national origin. There are, however, a number of major gaps in Title VII coverage. As a result of these gaps in coverage, the potential for discrimination against foreign looking persons which arises under this bill will not often be remediable. This is because Title VII does not cover discrimination by employers who hire less than 15 workers and Title VII does not cover discrimination for those hired for less than 20 weeks, which excludes most agricultural workers. Thus, Title VII does not adequately protect those persons who may be discriminated against as a result of the employer sanctions established in S. 1200.
>
> Second, prospective employees may be discriminated against on the basis of their alienage as a result of the employer sanctions provisions in S. 1200. Because the bill makes it unlawful to knowingly hire illegal aliens, employers may simply refuse to hire persons who are not U.S. citizens, although they are legally in the United States. While the bill establishes an affirmative defense to the charge of unlawfully hiring an illegal alien if the employer verifies that the employee is not an illegal alien, many employers may find it safer and easier to adopt a policy of refusing to hire persons who are not U.S. citizens, although those persons are legally in the United States.

Under the intent standard it is not sufficient to allege that a pattern or practice of activity results in discriminatory effects. Discriminatory intent may be proven by both direct and circumstantial evidence. The model of proof enunciated in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), is applicable. The discriminatory effect of a policy, including statistical proof in an appropriate case, can certainly be relevant to the question of whether an employer has intentionally discriminated. Thus, the discriminatory intent standard clearly encompasses more than just cases where employers have made blatantly bigoted remarks, or expressly stated either that they will not hire persons of a particular national origin, or will limit jobs to citizens.

Regarding the establishment of the Special Counsel's office, I understand that the search for a Special Counsel is in its final stages. We have requested funding for a thirty-person office for the balance of this fiscal year and funding to support a doubling of the staff in fiscal year 1988. The Department has been soliciting resumes for the staff positions, and those are being reviewed.

We are about to publish a notice of proposed rulemaking which sets out our proposal for the operating procedures and certain governing principles for the Office of Special Counsel and, to a certain extent, for the administrative law judges who will decide cases brought under the employment discrimination sections of the Act. The proposed rule also will describe the information that must be contained in written charges filed with the Special Counsel, along with other details about the way the office will function.

We are soliciting written comments from the public, and would certainly welcome such comments from Members of Congress. We invite careful attention to each part of the proposal, and stress that we consider the comment process as a valuable opportunity to receive public input.

As we have said earlier in hearings held while this legislation was under consideration, the methods employers must use to verify an individual's entitlement to employment are not difficult. There is no excuse for an employer to deny employment to those legally entitled to it in order to avoid hiring an individual whose employment could lead to sanctions. The Congress has determined that the threat of unfair employment practices is real enough to warrant the prohibitions included in the bill, and the Department is moving forward to be ready to enforce those prohibitions.

Senator KENNEDY. Mr. Baroody.

Mr. BAROODY. Thank you, Mr. Chairman. I thank you and the other members of the subcommittee for this opportunity to testify about the Department of Labor's actions and plans for fulfilling its responsibilities under IRCA.

We have, I should note, in the aftermath of enactment last fall, committed to and undertaken to meet with a variety of groups obviously to coordinate with our colleagues who represent the other involved agencies in the administration, but as well, to reach out to groups representing growers and workers and, indeed, congressional staff in developing our regulatory proposals.

The purpose of these meetings is to brief people on the status and to hear from them their input about the development of our new programs and to hear their views on how the regulations in the H-2 area should be formulated.

I realize that some of the principal concerns of this subcommittee related to our undertakings focus on two particular issues: the development of an integrated enforcement strategy between ourselves and the INS, and the development of our new H-2A regulations.

I believe we have outlined a satisfactory agreement with the Service with respect to the enforcement of employer sanctions. More details regarding our relationship and our respective responsibilities still need to be worked out, but we do not expect any major problems with this.

Moreover, I think the development of the H-2 regulations is proceeding on an appropriate time schedule that will allow us to publish a notice of proposed rulemaking early next month and to allow for 30 days of comment and still allow publication of final regulations well in advance of the June 1 date.

In the enforcement of employer sanctions, the department will provide substantial assistance to the service in investigating employer compliance with the recordkeeping requirements of IRCA. The assistance will be provided through the regularly scheduled compliance actions undertaken by both wage and hour and OFCCP. This will involve adding to these compliance actions a review of employer records required by IRCA.

The process would involve basically the following steps: request and obtain all or a sample of an employer's employment eligibility verification records; review the records to ensure they exist and are properly completed and maintained; and then a close-out with the employer; and, finally, reporting the results of this investigative activity to the INS.

The department's role in the enforcement of employer sanctions does not, as we presently envision it, include investigating behind the records—for example, by interviewing employees—or making formal findings of violations, issuing citations or imposing or collecting civil or criminal penalties under IRCA. These authorities are reserved to the Department of Justice and to the INS.

With respect to the development of H-2A regulations, we have implemented a process that involved, as I said, both informal discussions with INS, USDA and State, and consultations with interested groups prior to and during the drafting of departmental proposals.

The Departmental completed a draft proposal in mid-March. It is being circulated within the administration to INS, the Department of Agriculture and the Department of State for more consultation; and, indeed, it continues to undergo some considerable scrutiny within the department itself. We plan, though, to complete the review process by early April, as I said, with publication of the proposal as soon after the first of the month as is possible.

In developing these regulations, we have attempted to be responsive to our understanding of congressional intent. We have incorporated a number of statutory provisions that are intended to streamline the processing of labor certifications and to make the program as accessible as possible to growers. At the same time, we have developed new program provisions that are intended to strengthen both recruitment of U.S. workers and monitoring and enforcement of the H-2A employment contract.

In summary, we believe that IRCA requires changes in the current H-2 program in order to: (1), facilitate use of the program in cases where qualified U.S. workers are not available; (2), to ensure that positive recruitment of U.S. workers takes place; and, (3), ensure that employers adhere to the terms and conditions of the employment contract when they do participate in the program.

That would conclude my opening statement, and I look forward to answering your questions, Mr. Chairman.

[Prepared statement follows:]

STATEMENT OF MICHAEL E. BAROODY
ASSISTANT SECRETARY OF LABOR FOR POLICY
TO THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

March 24, 1987

Mr. Chairman and Members of the Subcommittee:

On behalf of the Department of Labor, I would like to thank you for the opportunity to testify on what the Department has done and is planning to do to fulfill its responsibilities under the Immigration Reform and Control Act of 1986 (IRCA). As I promised in my testimony before the House Immigration Subcommittee in December, the Department has engaged in an intensive planning effort over the last several months to determine how best to implement our new responsibilities under IRCA.

We have made every effort to ensure that our planning effort is effectively coordinated with the Executive Branch. We have had a series of consultations with other agencies involved in the implementation of IRCA, specifically, the Immigration and Naturalization Serice, the Departments of Agriculture, State, and Health and Human Services, and the EEOC. We also have held a series of meetings with diverse groups from outside of the Executive Branch on the subject of the new H-2A regulations, including worker representatives, grower representatives and Congressional staff. The purpose of these meetings was to brief them on the status of the development of the new regulations and to allow them to experess their views on how the regulations should be formulated. The most recent meeting with Congressional staff on the H-2A regulations was held just yesterday.

I realize that many of you are concerned about two particular issues--the development of an integrated enforcement strategy with INS and the development of the H-2A regulations. I believe that we have outlined a satisfactory agreement with INS with respect to the enforcement of employer sanctions. More details regarding our relationship and our respective responsibilities still need to be worked out, but we do not expect to have any problems with this. Moreover, I believe the development of the H-2A regulations is proceeding on the appropriate time schedule to meet the statutory deadline of June 1, 1987, for publishing final regulations.

In the enforcement of employer sanctions, the Department will provide substantial assistance to the INS in investigating employer compliance with the recordkeeping requirement of IRCA. This assistance will be provided through the regularly scheduled compliance actions undertaken by our Wage and Hour and OFCCP programs. This would involve adding to these compliance actions a review of employer records required by IRCA. The process would involve the following steps:

--requesting and obtaining (all or a sample of) an employer's employment eligibility verification records.

--reviewing these records to ensure that they exist and are properly completed and maintained;

--"closing out" with the employer; and

--reporting to INS on our investigative activity and findings.

The Department's role in the enforcement of employer sanctions will not include investigating "behind" these records (for example, by interviewing employees) making formal findings of violations, issuing citations or imposing/collecting civil or criminal penalties under the IRCA. These authorities are reserved to the Department of Justice and the INS.

With respect to the development of H-2A regulations, we have implemented a process that involved both informal discussions with INS, USDA and State, and consultations with interested outside groups prior to and during the drafting of a Departmental proposal. This Departmental proposal was completed by mid-March and is being circulated to INS, USDA and State for purposes of starting a more formal consultative process within the Executive Branch. We plan to complete this review process early in April, with the publication of an NPRM and with a 30 day comment period. This schedule should permit us to publish a final rule by June 1.

In developing our proposed H-2A regulations, we have attempted to be responsive to our understanding of

Congressional intent. We have incorporated a number of statutory provisions that are intended to streamline the processing of labor certifications and to make the program as accessible as possible to growers. At the same time, we have developed new program provisions that are intended to strengthen both recruitment of U.S. workers and monitoring and enforcement of the H-2A employment contract. In summary, we believe that IRCA requires changes in the current H-2 program to: (1) facilitate use of the program in cases where qualified U.S. workers are not available; (2) ensure that positive recruitment of U.S. workers takes place; and, (3) ensure that employers adhere to the terms and conditions of the employment contract when they do participate in the program.

Mr. Chairman, this concludes my prepared remarks. I will be pleased to answer any questions you and the other Members of the Subcommittee may have.

Senator SIMON [presiding]. Thank you.

Mr. Hawkes.

Mr. HAWKES. Members of the Subcommittee, it is good to have the opportunity to come before you and explain Health and Human Services' responsibilities under the Immigration Reform and Control Act.

HHS has five new areas of responsibility under this law. The law creates some time-limited, specialized eligibility rules for certain of the newly legalized aliens. For example, newly legalized aliens will not be allowed to receive AFDC for 5 years after their date of adjustment, and Medicaid is limited to pregnant, newly legalized aliens and the minor children. We are developing regulations for these, as well as some other, programs affected by the Act.

We are working with other Federal departments, particularly Agriculture to ensure that our regulations and their food stamp regulations are in congruence.

A second responsibility under the Act has to do with the Systematic Alien Verification for Entitlements Program that Commissioner Nelson mentioned earlier. The law requires that when newly legalized aliens or other aliens attempt to access Federal benefits, their immigration status be verified. That is a mandatory requirement of the Act beginning in October of 1988. It is an optional feature beginning in October of 1987, and we are working closely with the Department of Justice, as well as conducting some preliminary consultations with States and counties, around the implementation of this system.

A third area has to do with State Legalization Impact Assistance grants. Congress appropriated $1 billion a year for each of the Federal fiscal years 1988 through 1991 to cover two areas of expense. Part of the money is withheld for the Federal Government to pay for certain Federal costs. The remainder is appropriated to the States to cover some of the costs caused by newly legalized aliens relying on State and local government services.

We have regulations for this grant under development as well, and we are consulting widely on an ongoing basis particularly with especially those States that have very large numbers of potential newly legalized aliens, but with others as well. We expect to have draft regulations for the State Legalization Impact Assistance grants available in late April.

A fourth area of responsibility under this Act falls on the Social Security Administration and is the issuing of Social Security account numbers and establishment of new accounts for the legalized population. That is a new SSA work load, and the extent of the work is really not known at this time.

Finally, the Immigration Act requires 12 new reports to the Congress, and Health and Human Services has full or partial responsibility for six of those. We are beginning to look at what the requirements are to fulfill that responsibility.

Thank you. I will be pleased to answer questions.

[Prepared statement follows:]

STATEMENT BY

PHILLIP N. HAWKES

DEPUTY ADMINISTRATOR, FAMILY SUPPORT ADMINISTRATION

BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

SENATE COMMITTEE ON THE JUDICIARY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss the role of the Department of Health and Human Services in implementing the Immigration Reform and Control Act of 1986.

HHS has implementation responsibilities in five major areas of the Act. First, the Act affects HHS by creating time-limited, specialized eligibility rules for those aliens who participate in the legalization program. Some of these legalized aliens will have limited eligibility for programs, such as Medicaid, while being barred completely from participation in other programs, such as AFDC. We are developing regulations to implement the program eligibility restrictions imposed by IRCA for the AFDC, SSI, and Medicaid programs, as well as other affected HHS programs.

Also, because the Act affects eligibility for programs administered by other departments, such as the Food Stamp program, we are working with other federal agencies to develop consistent policies.

Another new responsibility imposed by the Act requires verification of the immigration status of non-citizen applicants for AFDC and Medicaid through the use of an INS-designated immigration status verification system. This system is often referred to as "SAVE".

Use of this new system is optional beginning October 1, 1987 and becomes mandatory in the following fiscal year. The costs incurred by State and local governments in implementing and operating this system for AFDC and Medicaid are subject to 100 percent reimbursement by HHS beginning in FY 1988. This verification requirement can be waived by the Secretary for programs within his jurisdiction if he determines that implementation would not be cost-effective or would be redundant.

Several Federal agencies are affected by the SAVE program and HHS is working with these departments in order to develop a consistent approach to the implementation of SAVE. Each department will issue regulations specific to its programs. Our goal is to have regulations in place before the 100 percent reimbursement provision becomes effective on October 1, 1987.

Another new responsibility given to HHS by the Act is administration of the State Legalization Impact Assistance Grants, which are designed to help state and local governments provide assistance to aliens eligible for benefits as a result of the legalization program. Congress has appropriated $1 billion less amounts for the Federal cost of certain public assistance programs, such as Medicaid and Food Stamps, for which certain aliens may be eligible. Such funds are appropriated in each fiscal year from 1988 through 1991 and remain available through 1994. State and local governments are to use these monies to assist in meeting the costs they incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens.

The Department is developing regulations to implement this new grant. Our goal is to issue proposed rules in May. We are consulting extensively with state and local governments as we write these regulations.

Also, the Department will be responsible for issuing Social Security numbers to legalized aliens. The Social Security Act requires that SSN's be assigned to aliens who are lawfully admitted for permanent residence and to aliens who are otherwise lawfully admitted and are authorized to work in the United States. This represents a large, new workload for SSA.

The last major new responsibility established by the Act is the development of over a dozen new reports to Congress. HHS is involved in writing at least six of these reports.

In addition to the required reports, the Act adds requirements for social research. Currently, the Department is reviewing both the reporting and research implications of the Act to assess how best to respond to these new requirements.

In closing, I would like to underscore the importance of coordination efforts both within this Department and among other Departments to the ultimate success of implementing this extensive piece of legislation. In order to ensure adequate coordination, we have established several working groups both within HHS and with other Federal agencies. First, a Policy Steering Committee composed of senior HHS officials, which I chair, oversees implementation activities within the Department.

Second, a working level task force coordinates activities of the various HHS components, and of other federal agencies affected by the Act. This reassignment of staff underscores both the complexity of the task given to us by the Act and our commitment to ensuring the timely and effective implementation of this important legislation.

In addition to this task force, we have program staff throughout our Department who will be writing the regulations and doing other work related to implementation.

We are working closely with the other agencies represented here today in implementing this major piece of social legislation through a newly established interagency work group, and finally we look forward to working with this Committee as we address the issues involved in immigration reform.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you may have.

Senator SIMON. Thank you.

Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to discuss the agricultural aspects of IRCA. With me today from the Department of Agriculture is Al French, who is acting as Special Assistant for Labor Affairs. With your permission, I would like to submit my full statement and perhaps simply highlight two areas.

Senator SIMON. They will all be entered in the record.

Mr. WILSON. IRCA recognizes that hired labor is necessary for the agricultural sector, and it acknowledges the reality that many farmers historically have employed illegal aliens to supplement the U.S. domestic agricultural work force.

Recognizing the unique needs for labor in agriculture may not always be met by the U.S. labor force, Congress included in the Act a program which provides for the admission of foreign workers to perform seasonal agricultural services. The statutory language defines the meaning of the term "seasonal agricultural services" as the "performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture."

All agricultural commodities are clearly perishable to some degree, and all commodities require labor in their production. But it is our responsibility to try and determine those commodities which should be included in "seasonal agricultural services" within the meaning of the Act. The determination, of course, is important because that determination will determine which foreign workers will be eligible to apply for temporary, and subsequently permanent, residence under the SAW program.

The department has been working to prepare regulations as required by the statute. We have had numerous meetings with other Federal agencies. We have held extensive discussions within USDA analyzing which commodities should be included. We have received many communications from representatives of farm employers and farm workers.

The legislative history of the Act does not give us an unambiguous guideline on the meaning of "fruits and vegetables of every kind," but the use of this phrase would appear to include all fruits and vegetables. We are in the process of developing an appropriate definition which will reflect as closely as possible the intent of Congress.

The definition of "other perishable commodities" has not been finalized. At present, we are giving consideration to a list of both food and non-food commodities which are not fruits and vegetables, but which qualify based on dependence upon seasonal field work.

The Act also revised the H-2 temporary worker program for agriculture, and the new H-2A program permits any agricultural employer, not just producers of perishable commodities, to temporarily employ alien workers when qualified U.S. workers are not available to do the work at the time and the place needed. Before an employer can recruit and hire a foreign worker, that employer must apply to the Department of Labor for certification that such employment will not adversely affect the wages and working conditions of U.S. workers similarly employed.

As the Act requires, the department is cooperating closely with the Departments of Justice and Labor in promulgating the regulations for the H-2A program. USDA's definition of "seasonal agricultural services" could exclude certain commodities from the special agricultural worker program. Therefore, the H-2A program could be the only means that producers of such commodities have to obtain foreign workers when there are insufficient U.S. workers to meet labor needs. The H-2A regulations will establish a workable program that will ensure an adequate supply of temporary labor while at the same time protecting the wages and working conditions of U.S. farm workers.

USDA does have additional responsibilities under the Act, and we are striving to meet these responsibilities and to see that the Act is implemented in a fair and efficient manner.

With that, I will conclude my statement, Mr. Chairman.

[Prepared statement follows:]

Statement of
Ewen M. Wilson
Acting Assistant Secretary for Economics
U.S. Department of Agriculture
before the
Committee on the Judiciary
United States Senate
Tuesday, March 24, 1987

Mr. Chairman and Members of the Committee, I appreciate the opportunity to discuss the agricultural aspects of the Immigration Reform and Control Act of 1986 (P.L. 99-603). With me today is Al French, Acting Special Assistant (for Labor Affairs) to the Assistant Secretary for Economics.

The Immigration Reform and Control Act recognizes that hired labor is necessary for the agricultural sector, and acknowledges the reality that many farmers historically have employed illegal aliens to supplement the U.S. domestic agricultural work force.

Hired labor costs comprise about 14 percent of production costs for United States agriculture as a whole. In the case of fruit and vegetable farms, however, hired labor accounts for nearly half of the production costs. Mechanization and other forms of technology have reduced the demand for labor in many sectors of agriculture, but large numbers of seasonal workers are still required at peak periods--during the time of harvest of many fruits and vegetables, for example. It is essential that an adequate supply of hired labor be available to meet these needs.

Recognizing that the unique needs for labor in agriculture may not always be met by the U.S. labor force, Congress included in the Act a program which provides for the admission of foreign workers to perform seasonal agricultural services. The statutory language defines the meaning of the term "seasonal agricultural services" as the "performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture."

All agricultural commodities are perishable to some degree and all commodities require labor in their production. However, it is our responsibility to determine those commodities included in "seasonal agricultural services" within the meaning of the Act. The determination of which commodities fall under the definition is important. The definition will determine which foreign workers will be eligible to apply for temporary--and subsequently permanent--residence under the special agricultural worker program. It will determine which agricultural employers will have sanctions deferred for an extended period until November 1988, and it will determine which agricultural employers will have access to foreign workers admitted legally to the United States under the special agricultural worker program.

The Department has been working to prepare regulations as required by the statute. We have had numerous meetings with other Federal agencies, namely the Departments of State, Labor, and Health and Human Services, and the Immigration and Naturalization Service, and have held extensive discussions within USDA analyzing which commodities should be included. We have received many communications from representatives of farm employers and farm workers.

The legislative history of the Act does not provide unambiguous guidelines on the meaning of "fruits and vegetables of every kind." The use of this phrase, however, would appear to include all fruits and vegetables. We are in the process of developing an appropriate definition which will reflect as closely as possible the intent of Congress.

The definition of "other perishable commodities" has not been finalized. At present, we are giving consideration to a list of food and nonfood commodities which are not fruits or vegetables, but which qualify based on dependence upon seasonal field work.

In the event of future shortages of workers to perform seasonal agricultural services, the Act provides for additional foreign workers to be admitted under the "replenishment" phase of the special agricultural worker program, starting in fiscal 1990. The Act requires USDA and the Department of Labor jointly to determine the shortage, if any, of workers in seasonal agricultural services for fiscal years 1990 to 1993, and determine the number of additional alien workers to be admitted to the United States to offset the shortage.

The general procedures for estimating the shortages are outlined in the Act. Basically, the shortage is the difference between the estimated demand for and supply of workers in seasonal agricultural services. However, the Act requires use of several specific variables in the estimating procedures. The data needed to measure these variables do not currently exist.

Although the replenishment program does not start until fiscal year 1990, advance planning, data collection and analysis will be required before the first determination of worker shortage can be made. We will work with the Deparment of Labor and the Bureau of the Census to develop necessary procedures for determining the worker shortage number.

Both "replenishment" workers and original special agricultural workers will be eligible to apply for food stamps. USDA's Food and Nutrition Service is working with the Department of Health and Human Services to estimate the resources needed by the food stamp program to serve this group.

The Act also revised the H-2 temporary worker program for agriculture. The new H-2A program permits any agricultural employer, not just producers of perishable commodities, to temporarily employ alien workers when qualified U.S. workers are not available to do the work at the time and place needed. Before an employer can recruit and hire a foreign worker, the employer must apply to the Department of Labor for a certification that such employment will not adversely affect the wages and working conditions of U.S. workers similarly employed.

As the Act requires, the Department is cooperating closely with the Departments of Justice and Labor in promulgating regulations for the H-2A program. USDA's definition of "seasonal agricultural services" could exclude certain commodities from the special agricultural worker program. Therefore, the H-2A program could be the only means that producers of such commodities have to obtain foreign workers when there are insufficient U.S. workers to meet labor needs. The H-2A regulations will establish a workable program that will ensure an adequate supply of temporary labor while at the same time protecting the wages and working conditions of U.S. farm workers.

Additional USDA responsibilities under the Act include the public education program on employer sanctions and responsibilities relating to the Commission on Agricultural Workers. USDA's Extension Service is cooperating with the Justice and other Federal departments in distributing educational materials to agricultural employers, employer and employee organizations, and others interested in the program. In summary, we are striving to meet our new responsibilities under the Act and to see that it is implemented in a fair and efficient manner.

Thank you, Mr. Chairman. That concludes my testimony. We will do our best to answer your questions.

Senator SIMON. Thank you very much.

Commissioner, let me take a hypothetical family. Let us say 5 children. Someone in the family is working at the minimum wage, $7,000 a year. Let us say there are two students in the family struggling to go to school over 18. They are not included in the $420. That is another $370. Let us say there is a grandmother in the family. She is not included. That is another $185. Here is a family earning $7,000 a year that will have to pay a $975 fee.

Is there some way that we can work out either a payment over a period of time or a waiver that gives people an additional time to pay this? It just seems to me that we are going to work an injustice on some people with this fee structure.

Any reaction?

Mr. NELSON. Well, Senator, in setting the fees, of course, again, as indicated, we are following the congressional mandate, both in the statute itself and the conference report language. We have also assessed what the total cost is likely to be and set the fees accordingly.

I think, as indicated certainly in our testimony, we are actually coming up with a more favorable situation with the people for legalization with the $420 family cap than a legal family coming in. They would pay $185 per person without any cap. So we think that is a very reasonable adjustment.

In fact, we have been criticized by some members of Congress as to why you should do that for illegal people that legals would not get. So it is a balancing factor.

Now, with your hypothetical, first of all, again, as you understand the cap, we think that any children under 18 in the family are covered there. So where there is one child with a husband and wife, it would be $420; with 5 children it would be the same fee.

Now, if someone is out of the home over 18, presumably, you know, they are able to work in many cases, even those students. A lot of students are supporting themselves and certainly can pay this reasonable fee of $185.

So, again, we think it is fair, it is equitable, it is reasonable, it is required by the congressional mandate, and it would be unfair to either the taxpayers on the one hand to have to foot this cost, or for the legal alien who waits patiently in line and pays the cost.

As far as payment in installments or others, that question has come up. Frankly, we think the administrative burdens on others would be so difficult to make it hard to implement. So we do not expect to have that. Again, people have friends, they have relatives, they have other situations where they certainly, if necessary, could get loans to take care of this very moderate fee.

We think the approach we have followed, as I say, meets all the qualities of both the legislation and of fairness.

Senator SIMON. I would appreciate your reflecting on this. You mentioned, for example, students can come up with $185 pretty easily. I also serve on the Education Subcommittee; that group of students in low-income families is declining in American higher education simply because they cannot afford to go to college now, much less come up with another $185.

So my guess is we are probably going to be pushing for some modification of the regulation, either through statute or working something out with you.

What about the divided family problem that I mentioned before? What do we do?

Mr. **Nelson**. Again, Mr. Chairman, we think the legislation as passed by Congress is pretty clear that each individual has to qualify on their own, that there is no exception for that. Now, obviously, there are minor children in some; there are some humanitarian considerations that can be applied, and we will certainly be very reasonable there.

But I think the basic situation with a spouse, one spouse qualifying and the other not, again, is not far different from the person coming in legally. Many come in legally, have to wait a period of time to petition to bring their spouse to the United States. So the concept is that it might take them a little time, but we would certainly encourage family reunification. But we do not think there is any ability under the statute to waive in somebody who just does not qualify.

Senator **Simon**. How much of a wait is there in Mexico right now?

Mr. **Nelson**. I am not sure on the time. It varies, again, with the different categories. If you have a spouse, that can be relatively fast. I am not sure what the time is in Mexico.

Senator **Simon**. When you say relatively fast, that means what?

Mr. **Nelson**. Several years, maybe.

I do not know that. We will get you the exact time.

Senator **Simon**. All right.

Mr. **Nelson**. But as you know, the direct spouses can come in above and beyond the quota numbers. So I would anticipate in most countries of the world that a spouse could enter the United States probably within a couple of years or, in many cases, much shorter than that.

Senator **Simon**. Well, a couple of years is pretty long for a married couple. I understand second preference now in Mexico is about a 9-year wait.

Mr. **Nelson**. There are longer waits for the lower preferences, but I do not think that applies to the spouses.

Senator **Simon**. We mandated in the legislation the appointment of a commission. I recognize this is not all under your jurisdiction.

Where do we stand on that commission to work with Mexico on the economic problems?

Mr. **Nelson**. I believe, Senator Simon, that the commission is entirely appointed by Congress, and so I will have to throw the ball back there.

Senator **Simon**. I think it is a combination, administrative and congressional.

Mr. **Nelson**. The agricultural commission is a combination, I believe, and others can correct me. The Mexico international migration issues, I believe, is strictly a congressional committee.

Senator **Simon**. We will check that out.

Then, finally, I note—and maybe not finally if Senator Simpson does not get back here before this question is answered. In the Chicago area, I note that the special offices that you are setting up, and I applaud your setting up the special offices, but none of them is in the Hispanic areas in the city of Chicago where, obviously, the greatest demand is.

Any reason for that? I do not expect you to know specifically that much about the city of Chicago, but why is that?

Mr. Nelson. I am not sure that is the case. I would have to demure on that as far as that because I do not know where the locations of any of these offices are. It varies.

I know in some areas like Los Angeles they are talking about 14 or 15 offices. I think in New York City, for example, they are talking about two or three larger offices, partly because of the nature of the city and ability for transportation.

I am not sure what the number in Chicago is or the locations. I will be happy to provide that to you. Certainly, the instruction to our people was to set up the offices in the locations within any given city that can best serve the community. I would be a little surprised that the Hispanic area of Chicago is not served.

I will double-check it, but I am sure the offices are set up—I am willing to stake my guess on this one—that it is certainly set up to conveniently serve any of the different ethnic groups in the Chicago area.

Senator Simon. Let me quote from the Chicago Tribune. It says here, "The INS already has decided on sites in suburban Blue Island and Elgin and at Belmont Avenue and Pulaski Road on the city's northwest side." It quotes Maldef as criticizing the government for failing to put a legalization center in one of Chicago's Hispanic neighborhoods.

If you could check that out and get back to me, I would appreciate it.

Mr. Nelson. I will, sir.

[Information follows:]

Memorandum

Subject Chicago Legalization Sites	**Date** MAR 25 1987
To Thomas C. Ferguson, Deputy Commissioner Central Office	**From** Office of the Regional Commissioner, Northern Region

Reference your inquiry this morning on Chicago's legalization sites (response to Senator Simon's inquiry in Committee).

Issue: Are Chicago area offices located to serve the public?

Discussion: The District Director in Chicago has long maintained that it was a mistake to publish the actual specific location of the four Chicago Legalization offices, in particular the Little Village site. It was only in the final draft of the proposed regulations that this designation was removed. In the meantime, the Outreach Office had distributed the proposed list of sites to a wide audience raising expectations in the general public.

Chicago has four sites located at Chicago North (3119 Pulaski), Blue Island, Forest Park, and Aurora. All four are directly served by the Regional Transportation Administration (and special service has been discussed with the RTA by DD, Chicago).

The 3119 Pulaski site will service Hispanic, ~~Asian,~~ Polish and African communities, all located within a fifteen minute drive or thirty minute RTA trip from the site.

The Blue Island site will service primarily Hispanic communities on the southern side of Chicago. Transit time from any of these communities is between ten and twenty minutes.

The Aurora site will service an exclusively Hispanic Community. This community is located over thirty miles from central Chicago, and the transit time to a Chicago office would be from one to two hours.

The Forest Park site will service the Polish, Chinese, Indian and Hispanic populations on the west side of Chicago. Transit time from any of these communities is eighteen minutes or less. The Forest Park site replaces Little Village. DD, Chicago attempted to obtain a site in Little Village, but GSA was unable to locate even one site in that area (also known as Pilsen). The Little Village site is a center of gang activity and has the highest arson rate in the greater Chicago area. Forest Park is the next area west of Pilsen.

Populations: Apprehension statistics show that only about 40% of the Chicago area apprehensions are Hispanic. At the same time Chicago has the largest East Indian population concentration in the United States, the largest Polish concentration in the United States, one of the largest African population in the United States, and significant other European and Asian populations. As indicated above, the location of the Chicago sites is designed both out of a need to service all alien populations and by the realities of the Chicago area real estate market.

Conclusion: No Chicago site is located more than thirty minutes transit time from the significant population bases they are designed to service. No Chicago site is located in an area that is perceived by the general public as either unsafe or the turf of a particular nationality group. The Chicago sites are properly located.

James L. Buck

JAMES L. BUCK
Regional Commissioner

cc:
Alan C. Nelson, Commissioner

Senator SIMON. Is Senator Simpson waiting? While he is coming in, let me ask one question that has nothing to do with today's hearings. What about the situation where the Thais are closing or planning to close two of the refugee camps on the Cambodian border? What is your observation about the significance of that, both in that area and what that means for immigration here?

Mr. NELSON. Let me answer it, if I might, Senator, in a broader tone, because I do not obviously know exactly all the ramifications of the Thai government's decision. Probably the State Department could better answer that.

But I think it is important for all of us to look at the job that the United Nations, and the United States particularly, has done with refugees since the Vietnam War, particularly in Southeast Asia. We have taken, what, over seven, eight hundred thousand. We are currently this year taking thirty or forty thousand from that area. Our numbers have stayed high, although they have gradually declined, which has been the sense of Congress along with the administration.

I think one of the issues that so often comes up in Southeast Asia is that we are, what, 12 years or so past the Vietnam War, and that a lot of these people, most of the refugees have been taken out.

Now, people would differ with that, but we have continued to process; the Immigration Services does the processing, and we have processed all those people that have come forward. A lot of people, frankly, and I think Senator Simpson from his tours over there too have realized that you are now talking about a lot of economic migrants in addition to some refugees. I think people often blur that.

So with the Thai government's decision to close camps, as I understand it—and it is not my position to judge their behavior here—they had the same feeling that, well, a lot of the refugees have been taken out. Of course, they have some question as to whether the western countries should take more. They, I think, themselves see that things need to be done. I think they have been committed, to my understanding—and I think it is correct—not to push people back to persecution. I think that is the key issue for all of us, that there not be any situation where people who are not either processed out as refugees to the Western World or pushed back to Cambodia or other places that might suffer persecution.

I do not know that anybody, certainly in Thailand or the State Department or the Immigration Service, has any reason to believe that that persecution problem exists.

Senator SIMON. I would appreciate if you could have somebody on your staff send me a memo with some background on that.

Mr. NELSON. I will.

[Information follows:]

QUESTION AND ANSWER OF INS' REACTION TO THE CLOSURE OF THE KHAO-I-DANG REFUGEE CAMP

QUESTION:

Could you please comment on the Immigration and Naturalization Service's response to the closure of the Khao-I-Dang refugee camp by the Thai authorities?

ANSWER:

Thai officials first publicly announced the proposed closure of the Khao-I-Dang (KID) refugee camp on June 13, 1986, at a meeting of representatives of resettlement countries. At that time, the United States Government expressed its regret and concern over the closure. We stressed that the U.S. Government is primarily concerned with the safety and protection of KID residents. We also requested that, wherever they are located, these people should continue to enjoy international protection and be accessible to third country representatives for processing under their various refugee, family reunification, and resettlement programs.

We have found the Thai generally responsive to our concerns. For example, in response to a request from the Thai Government, the UN Secretary General has designated the UNHCR to continue its protection role for the KID population who may be relocated to sites along the Thai-Cambodian border. The Thai have also assured us that resettlement countries will be given sufficient time to complete processing of eligible refugees. The United States Government is, therefore, optimistic that Thailand will be maintained as a country of first asylum, and we do not foresee any changes in this regard. Indeed, the Immigration and Naturalization Service is continuing to process refugees at a number of sites in Thailand, including Khao-I-Dang.

Of the original KID population - those who arrived in Thailand between 1980 and March 1983 - which numbered some 165,000, the Immigration and Naturalization Service has accepted for resettlement over 130,000 people or

79% of the total. Twenty-one thousand have been resettled in other countries. With accretions since 1983, the current camp population stands at approximately 26,500.

The Thai Government originally stated that it would officially close KID at the end of December and that from January 1, 1987, no new entries to the camp would be allowed. However, the closing process, as approved by the Thai Prime Minister, has been divided into three stages. The residents have also been divided into three groups which will be treated differently.

° In response to our concerns, the Thai informed us that the only persons who would be moved immediately were those who had entered KID without authorization after 1985. This population is roughly estimated at anywhere between 300 and 1,000 persons. Transfer of these people began on March 1, when some 200 persons were moved to Site B, or Green Hill, a camp affiliated with non-Communist Cambodian groups led by Prince Sihanouk. The Thai have stated that it could take three months to move the entire group.

° The next group of KID residents to be moved are the so-called "ration card holders" - those who entered the camp without authorization after August 1984 and who were later issued food ration cards but were not recognized as refugees - who now number about 7,000. The Thai have indicated that these persons may have a choice as to which site they will be transferred. In any event, they will not be required to go to any site affiliated with the Khmer Rouge. It is estimated that about 10% of this group are related to other Cambodians who have been approved for admission to the United States. In our effort to avoid dividing families, we have authorized the processing of these persons.

° The last group to be moved are the remainder of the original population numbering about 14,000 and the so-called "family card holders" - those who originally entered the camp without authorization between March 1983 and August 1984 but whose presence was regularized by a census - who now number approximately 18,350. They, too,

> have a choice of future location and will not be required to settle in a site affiliated with the Khmer Rouge. In response to our request, the Thai Government, in 1986, authorized resettlement countries to interview the "family card holders." We have been interviewing from this group all cases which are of compelling concern such as former political prisoners, former U.S. Government employees, family reunification cases, and those who might have other ties to the United States. To date, approximately 2,000 people have been interviewed, of whom about 1,300 have been approved for resettlement.

In addition, members of all three groups - the original residents, the "family card holders" and the "ration card holders" - who have not qualified as refugees may be considered for admission to the United States either as immigrants or as beneficiaries of humanitarian parole. Indeed, in May of 1986, the Immigration and Naturalization Service established a parole program for this exceptional group and provided the district director in Bangkok with authority to grant parole from October 1. To date, 336 persons in KID have been identified who may be eligible for this program; 97 have been approved; 4 found ineligible; and, 16 are pending further review. We have requested the Thai authorities to grant access to interview the remaining 217 persons currently eligible.

During what now appears to be an extended closure period, the activities of international organizations in KID will gradually decrease in proportion to the actual population. However, the hospital of the International Committee of the Red Cross will continue its activities. This will help provide medical services to the Cambodians along the border as well as the Thai people in adjacent areas.

Senator SIMON. Let me call on the former Chairman of this subcommittee who had an outstanding picture of himself in the newspaper today.

Senator SIMPSON. Thank you, Mr. Chairman. I was quizzed this morning on that. I told them I wish I had said that a little differently. This was after my mother spoke with me.

I also said that I wished I had not grimaced in the way I had. Then I also said that I did not have any regrets, however, except that I had not helped the man at the Washington Post select the photograph. It made me look like a sex-crazed monster. [Laughter]

Anyway, so it goes. You cross the fine line between good humor and a smart aleck, and you pay for it and I did. Move on to something else.

So, Mr. Chairman, I do appreciate that, and you again were such a quick study on immigration as you came into the Senate in your early months here and on to the subcommittee, and it is a pleasure to see you—in the way I know you do, since we knew each other back in 1971 when we were both legislators in the States we represent now—to see you taking such an active interest.

Again, is it not odd how it comes back to the essence of definition? Senator Specter was here earlier, and he was talking about a GAO report on asylum. We are back to where we always come.

The Immigration and Nationality Act, the INA, is a broad one, but this bill of 1986 did not have anything to do with refugees. We are talking about illegal, undocumented persons, and that is not a refugee. So now we keep coming back into it, as we often did return to it, but I respectfully suggest that the GAO report did not find that the administration has unfairly applied the refugee definition to asylum applicants. They said that the INS did not articulate a clear standard when deciding asylum cases from any country.

Then, of course, what always escapes the net is that only 2 percent of the asylum applicants who are denied are ever deported. Two percent of the asylum applicants, all of them—the thousands of them—only 2 percent are ever deported, according to GAO.

If the American people can finally figure out what we are talking about: we had apprehensions at the ports of entry of 701,000, pre-inspection apprehensions of 18,000, apprehensions by the border patrol of 1,672,000, 114,000 smuggled in that we apprehended and 23,681 deportations.

Now, that is the way it is. In addition, when we have also come back to Laotians and Cambodians and the Thais. Remember that we have taken care of everyone who has thrown their lot in with us, and we have resettled more people than all the other countries of the world combined—750,000 from Southeast Asia. We did that.

There is now a bill, which is not from a member of the subcommittee, which sets a level of refugees from Thailand. How can you possibly ever set a level of intended refugees? It is impossible. It is not appropriate in the system.

On a case-by-case basis, we will continue to take care of all the people who threw in their lot with us from Southeast Asia, but at some point—12, 14 years after the fact—we should have received those that threw in their lot with us because just age alone prohibits some of them, who were 12 years old, or 8 or 10.

So it is a tough enough subject, but I just always like to say we are not very good at deporting people. That is why EVD is an extraordinary adventure: it would legalize 600,000 human beings, saying that if they go home they will meet the test of persecution. Yet we have 21 flights a week from the United States to El Salvador, 10,000 people a month that move back and forth in the normal intercourse of social and business activity. It cannot be.

You know, somewhere in it you have to ring the crystal gong and say let us kind of forget the high emotion of it and come back to where we really are.

Well, I have nearly used all my time, but I wanted to ask about the Moorehead Amendment that provided a level of support in each fiscal year. I think it was very important, and we all agreed with it in conference that it be at least 50 percent higher than the level for fiscal year 1986.

Now, that was passed in the House, incorporated in the conference. Does the INS budget request meet that requirement? And in addition, what is the normal attrition rate for the border patrol? How many do you anticipate will move to new investigative positions that the bill created to enforce employer sanctions?

Mr. Nelson. Senator Simpson, in response to your first question on the border patrol funding, the Moorehead Amendment is specific. The 1987 and 1988 budgets for the Immigration Service do meet part of that. It would call for a 50 percent increase. The authorized level of staffing is in the budget.

The funding, however, is for 1,100 positions rather than the 1,800. Part of the reason for that is budgetary, of course. As you know, we have a very significant increase in our budget and close to the authorized levels. The largest part of the Justice Department, I think is as I indicated in my earlier testimony, some very significant increases including earlier border patrol increases. So the 1988 budget, as I say, will accomplish the hiring of 1,100 additional border patrol officials. That is about what the time would allow in the orderly processing, so there is a sound planning reason for it as well as the budgetary.

We look forward in possible later years of picking up that difference. Again, remember we had a thousand increase in 1985 due to your good efforts and others in the Congress, and with this additional 1,100, we will bring our force up dramatically.

I might note, too, the role of the border patrol in drug interdiction is dramatic. We seized the most drugs of any agency on the Mexican border, as well as other activities. So we are proud of that.

Now, on the attrition rate, again, I think this has been a very interesting trend. It, of course, varies to some extent, but in 1984 we had an attrition rate of about 12 percent. That dropped to ten percent in 1985, eight percent in 1986, and in recent months we are talking about a five percent attrition rate. So we are very pleased with the lowering of that.

We will lose some officers from the border patrol, of course, to investigations. We anticipate maybe about 160, but we will cover for those, of course, in the hiring process.

Senator Simpson. Mr. Nelson, let me conclude. I know Senator Leahy is here, and I will go vote and I will return. I know Pat has some questions.

Senator **Leahy**. Thank you.

Mr. Nelson, I do have a couple of questions. At the risk of sounding just a tad parochial, I will be. On December 8th, Senator Stafford and Congressman Jeffords and I wrote to you about the INS facility in St. Albans, Vermont. That is the parochial part. Naturally, I am interested only because of how it enhances the ability of the United States Government to carry out the laws and to further justice.

You said in your response to us that there is no question that the growing permanent work load of the INS required expansion to the St. Albans facility. You added, however, that while the INS wants expansion to occur within 24 months, you could not commit to finishing it by then. Why?

Mr. **Nelson**. Senator, I certainly remember talking to you on the phone on this and the correspondence that has transpired. I might note preliminarily, of course, we have our regional headquarters for the entire eastern seaboard in Burlington. I understand it is the largest Federal employer there in addition to our operation in St. Albans, which is one of the regional processing centers.

The way the development of the immigration legislation is going, I do not think there is any question—and I think we have communicated that to you—that all of our regional centers, including St. Albans, will be expanded. So from a parochial point of view, I think you can be pleased and we are too, because we are pleased with the support we get from you and the people in Vermont, that our entire operation will increase. You will have additional manpower, additional space and additional facilities.

I think the only question is, in response to your "Why," is we just do not know the exact time frame or the exact numbers. But I think you can be assured there will be increases in all the areas I indicate, and more likely sooner than later. I do not think the indication was that it was going to be past 24 months; we see a lot of that change occurring as we move forward now in the implementation of the immigration bill.

Senator **Leahy**. One, I know you are not going to relocate. I have Appropriations Committee language to that effect. But I am still confused as to why we cannot get a date. We know that there is going to be a greater requirement. We know they are going to expand.

Mr. **Nelson**. Right.

Senator **Leahy**. Then maybe I just do not understand exactly how these things work. Why can we not get a date when that expansion would be?

Can we get the specifications for a permanent facility?

Mr. **Nelson**. We can certainly provide you and your staff all the ongoing information we have on that.

Senator **Leahy**. Does that ongoing information include specifications for a facility in St. Albans?

Mr. **Nelson**. I presume it would, sir. I have not seen those, but again, as indicated, I think we have a letter in response under way that we will send to you shortly. But we will provide you all the information we have in that whole area.

Senator **Leahy**. Can you give me the specs for a permanent facility?

Mr. **Nelson**. If we have them, we will give them to you.

Senator **Leahy**. Okay. And if you do not have them, can you let me know when you will have them?

Mr. **Nelson**. Yes.

Senator **Leahy**. Specifically?

Mr. **Nelson**. Yes. We will give you all the specific information available.

[The following was subsequently supplied for the record:]

Please provide an insert for the record regarding the expansion of the RAC at St. Albans, Vermont with a timetable for completion.

In order to answer this question, it may be helpful to review the specifics of the direct mail program in the Eastern Region. The initiative is divided into three phases. Phase one involves five form types and a total of 76,900 applications per year. This phase was implemented on August 1, 1986. Phase two involves 18 form types and 260,700 applications annually. As the number indicate, phases two and three require considerably more resources than phase one. The passage of the Immigration Reform and Control Act of 1986 (IRCA), while causing some amendments to our direct mail timetable, will provide the Service with an opportunity to obtain a significant amount of computer equipment and to develop automated systems. These systems and equipment will be merged into our existing regional service centers, giving us the resources necessary to advance the direct mail program. We are already planning the initial steps in this process for fiscal 1989. Hopefully, when the legalization programs is included in 1991, the resources of the regional legalization facilities will be totally coverted for use in the direct mail effort.

Senator **Leahy**. How many jobs, at a minimum, would this result in for Vermonters?

Mr. **Nelson**. I do not know that, Senator. Again, as indicated, there certainly will be increases. As we get those figures out, we will do it. As I mentioned in my prepared testimony, we are talking about 2,000 people we are adding—some temporary, of course—for the legalization program. We have also testified to the permanent staff increases. Those will be spread around the country.

Senator **Leahy**. I want to be fair. We do not need the whole 2,000.

Mr. **Nelson**. Thank you, sir.

Senator **Leahy**. All your regional people will be enough.

Incidentally, you have a temporary legalization processing facility up there now, too, or planned in the Chittenden County area which is south. And if we had not had this discussion on the phone before, I would not have bothered with anything quite this parochial. But do you know where that is going to be located?

Mr. **Nelson**. I do not, Senator. Again, I am not holding back because I honestly do not know.

Senator **Leahy**. I understand.

Mr. **Nelson**. I will provide it to you if we can.

Senator **Leahy**. Do you want to suggest to whomever among the various spear carriers who are here that would know that answer that if they could just give me a call? I am in the book, and I would be happy to hear from them.

Mr. **Nelson**. I think you can be very proud of the job that you have done and your colleagues from Vermont in relations with the Immigration Service and with the number of facilities.

Senator **Leahy**. Please believe me, I have been asked to go to bat for various people up there, and some I have said absolutely no to because I feel they have not done a good job. I do feel the people who work for INS up there have worked very, very hard and are good people. I think they are highly dedicated, highly motivated. That is also a compliment to you, too, and to the rest of the Service. If I did not think they were so dedicated and if I did not think they really provided a lot of assistance, I would not go to bat for them.

Mr. NELSON. Thank you. We appreciate that, sir.

Senator LEAHY. Thank you. We will stand in recess for a few minutes. I understand Senator Kennedy is coming back, and there is a vote on so we will stand at ease.

[Recess.]

Senator GRASSLEY. Commissioner. Nelson, it is my understanding that the fee of $185 is intended to cover the costs of the legalization program. However, is it not true that the legalization fee does not fund any investigators to look into the fraud on the applications?

Mr. NELSON. Senator Grassley, let me answer it generally first. As we developed the fee, we looked at all aspects. We looked at the overall costs of the program, the estimate on the number of people who would likely come forward—obviously, that is very difficult to know, but based on our best estimates, that was one factor; obviously, the criteria set forth in the legislation and the conference report as to comparability with the legal immigration fees. So altogether we felt the $185 plus this special arrangement in some cases for families was not only fair, reasonable, but did, in fact, meet that mandate.

On your specific question on investigators, I believe that that would cover; I know it covers all of the setting up of the offices, the new staff, doing the record checks with the FBI, with other public agencies, with the review process. I believe that there is some in there covering the investigation for anticipated fraud. I will have to double-check that.

Senator GRASSLEY. Would it cover the salaries for the investigators?

Mr. NELSON. I believe so. I will, again, have to double-check it to be sure that I am accurate on that. But our goal was to cover all the anticipated costs for the legalization program.

Senator GRASSLEY. You may be right and my information may be wrong, but it was my understanding that it probably did not. The extent to which it does not, if anybody is suggesting that the $185 is too much when Congress mandated that the program be self-supporting, then I think that is one other aspect for them to consider whether or not it is.

Is it true that no money has been requested for investigations into legalization fraud?

Mr. NELSON. That is not correct. Again, we, of course, have added, if the budget is passed as submitted, a very substantial increase in the number of investigators, I believe something like 900. It is a very substantial increase that will deal not only with the employer sanctions, marriage fraud issues, criminal alien issues, and certainly also relating to any fraud in the legalization process.

I do not know that we pulled it out in a special category for that, but all of the areas are covered by the very significant increase in investigator positions.

Senator GRASSLEY. Who is going to investigate legalization fraud?

Mr. **Nelson**. Well, it will be a combination of many people. First of all, you will have the interviewer, of course, who would interview the people and very often would bring something up that might lead them to believe there might be fraud.

Secondly, you have got a situation where we have used our fraudulent document laboratory to check on any documents that appeared to possibly be questionable. So it will be a combination.

Then, if there was an indication that there might be fraud, that would be referred to a group of investigators set up to investigate those situations; and in addition, of course, if we find what we believe is fraud, we would be submitting those cases to the U.S. Attorneys for prosecution.

Senator **Grassley**. It would be, then, probably the same people—the same people that are involved and responsible for the employer sanctions enforcement. That is 338 people, right?

Mr. **Nelson**. No. I think the total is something like 900 overall. Clearly, there will be people especially designated to deal with the fraud issues involving legalization. I am just saying the overall number of increased investigators, some of those will be available for that function as well as those other functions.

Senator **Grassley**. Then I should ask you for the record to comment on whether or not my understanding that there will be 338 investigators for both sanction enforcement and amnesty fraud, if that is not the number.

Mr. **Nelson**. Let me supply that, Senator Grassley, for the record. It is hard to look through budget documents while I am talking, but we are talking about overall investigators of something like 900 or plus positions.

[The following was subsequently supplied for the record:]

How many additional officers will be on duty at the end of Fiscal Year 1987 and Fiscal Year 1988 as a result of your immigration Reform Budget Request?

	1987	1988
Border patrol	324	976
Investigations	200	671
Detention and deportation	187	354

Senator **Grassley**. I will stand corrected if that is what the written record shows. I just thought that that indicated that we would not be able to do a very good job of the investigation if those numbers were real, and particularly if they were involved in two aspects.

But, you are saying that are not involved in both aspects; and, you are saying there is a larger number.

Mr. **Nelson**. Yes, sir.

Senator **Grassley**. Okay. The draft regulations state that an alien must maintain that continuous physical presence from November the 6th of 1986 onward, but that the absence may be broken by what is described as a "brief, casual and innocent absence," designated in the regulations as no more than 30 days.

Now, a month seems to me to be a bit long for a brief and casual absence. There is some case law that seems to indicate that the legal terms brief, casual and innocent may be interpreted to be as short of a period of time as 24 hours, so why has the Service chosen to permit what I would consider very extended absences?

Mr. **Nelson**. Again, Senator, in drafting the regulations obviously based on the statute and looking at all factors, there are several periods. One is the period of 5 years from 1982 on, and the periods of absence we allowed there were 45 days in any one year and a total of 180. I think you are alluding to that after November 6th.

Again, we have advised people that it is better not to depart the country if you think you are qualified. I think that is one basic thing. The other is to just set what we think is a reasonable standard based on many factors to not have to evaluate each case. Again, a lot of the people say the periods that I alluded to and the period you allude to are too short. Why are we so stingy? The other side says why are they so long. Again, it is trying to make a decision based on all the considerations we can, the input we have received, to what we think is a reasonable standard.

Senator **Grassley**. Was there any question about 30 days in the sense of should it be 30 days or 20 days or 15 days or 45 days?

Mr. **Nelson**. Yes. We discussed the whole range.

Senator **Grassley**. What is it? A happy medium within the bureaucracy?

Mr. **Nelson**. No, there were many, many factors considered and then weighing all the considerations, trying to be reasonable and fair, yet on the other hand obviously not being too lax. We think those are reasonable standards.

Again, those are published for further comment. We will assess the comments we get and come in with our proposed final regs after the comment period.

Senator **Grassley**. The regulations also state that the employment authorization will be revoked whenever any regional processing facility denies an application. These regulations state that the notice of revocation of employment authorization will be mailed to the alien's last known address.

What steps, if any, will be taken to notify an employer that the alien's employment authorization has been revoked?

Mr. **Nelson**. I am not sure of the answer to that, Senator. First of all, of course, in many cases we would not know the employer. I do not know that we have the capability necessarily to automatically notify employers. Obviously, if we had that information readily available to pass to a known employer, I would think we would do that.

I will have to give you more information on exactly what our operating procedures in that regard would be.

[The following was subsequently supplied for the record:]

Question. What steps will be taken to notify an employer that the alien's employment authorization has been revoked?

Answer. There are two basic scenarios where an employer will become aware of an alien's termination of employment eligibility. The first occurs when the alien's period of authorized employment expires. This is an occurrence of which the employer should be aware, as he or she has examined the alien's time or employer-limited work authorization document and noted it on the Form I-9. The employer is often aware of the time limitation as he or she is responsible for filing the labor certification upon which the temporary work authorization has been based as in the cases of H and L nonimmigrants.

The second instance occurs when an illegal alien is encountered at a work site, and the employer is notified that the individual is being apprehended due to his or her illegal status and should be terminated from that employment.

Senator GRASSLEY. Okay. Will a notice of employment of an unauthorized alien be sent to the alien's last known employer?

Mr. NELSON. I am not sure of that, whether that has been developed. That gets probably more into the operating procedures which follow behind the regulations. I know one question that I know has come up in some discussions is, of course, the work load. There would be a certain desirability, of course, to do that. Now, whether it is feasible is something we are going to have to develop as we go downstream.

Senator GRASSLEY. Okay. My last question is in regard to the definition of the term "continuous residence." This is as used in 245(A)(b)(1)(B) to require all aliens who are temporary resident aliens to be inside the United States that no single absence may exceed 30 days, and that the aggregate of all absences do not exceed 90 days.

Given the fact that the period of time that these aliens may be temporary residence status, that is only going to be 12 to 18 months in that statute, I believe. Is not the 3 months an awfully long time for aggregate absences?

Mr. NELSON. Again, sir, I would just have to go back to the other comment, both what the statute is directing and what a reasonable balance has to be considering all these factors.

I mean, the key thrust we all have to keep our eyes on is that we are talking about people that obviously have intended to be residents of the United States, even though illegally, during this preperiod, and then the processes thereafter that they continue to have that intention. The question is whether the 30 days or whatever, these are issues that we, again, will have to continue to address.

Senator GRASSLEY. Mr. Chairman, I have no further questions.

Senator SIMPSON. The Chairman is not here; however, you and I now are going to take it all over.

Well, Chuck Grassley was a great help throughout the entire process as a member of the subcommittee. I have always appreciated that. Senator Kennedy will return in a moment. I will just go forward with a couple more questions, if I might.

I am concerned, Commissioner Nelson, that we are directing all our efforts, all our dissemination of information efforts at the employers and the candidates for legalization, while the U.S. citizen and permanent resident employees of this country are not being thoroughly made aware of the fact that on June 1, 1987, they are going to have to present original documents in order to obtain employment.

That is, I think, going to be a startling revelation to American citizens and permanent resident aliens, those of us like myself who got that Social Security card when I was 15 years old working at the Cody Bakery and making those unbelievable sweet rolls with the jelly in the middle of them. That is why I have never eaten any of those particular confectioneries since. I know how they are made.

So I cannot find my Social Security card, and I am starting now to get it because at some point when I finish this task—and that may come voluntarily or involuntarily—I will require that. That is going to be the law of the United States, on a new hire, of asking both me and those who "look foreign" for this documentation.

What are the Service's plans, then, for getting this important information out to the employees?

Mr. NELSON. Senator Simpson, I might answer that in a broad term, because I think what we are doing, have done and what we will continue to do and expand relates to all of the groups involved—employers, aliens whether legal or illegal, and U.S. citizens.

You are right. I think one of the interesting things in the evolution over the last few months since the bill was signed is a growing recognition and surprise by many people in the country that, in fact, this verification process applies to everybody. I think this is an interesting issue.

As I mentioned, we have had some 300 meetings throughout the country already with everybody. We have been on radio and TV and that is expanding; this employer brochure that I made part of the record, while geared to employers, likewise covers the employees. That information we expect, as I say, half a million copies to go out soon. We have set up an 800 telephone system. We will have 20 different messages in English, Spanish and other languages—again, directed to all of the publics that are involved. We can handle about almost 400,000 calls a month on that.

We have already a number of tapes on "Ask Immigration," as you know, that is in place throughout the country that people can call in. We will be having a number of public service announcements. A number have already been cut for radio and television. We will be expanding those in the months ahead—again, addressing all the publics that we talk about.

A public information contract is about ready to be signed that, again, will disseminate wide information around. So we think we are going at it in an organized, deliberate way. The form, the employer verification form, as I mentioned in my testimony, we think is a good form. We look for further comment. Again, we have disseminated this as widely as we can. So I think the process we are going through is organized and deliberate. It will be expanded in the months ahead. I would like to compliment you and Congress. I think in this legislation the fact that you build in a 6-month lead time for sanctions, legalization and so forth is excellent because it is a very massive task. I think it does give us the ability to go at it in an organized fashion.

I think all we can do is continue what we have done and expand it as we plan to do.

Senator SIMPSON. Let me ask a question of Mr. Baroody. The H-2 worker program was vexatious throughout. It slowed us at one time; there was a lot of misinformation about that. Where it is used it has worked, whether it is in West Virginia or New York. Where it has not worked is in the West, where there are perhaps a larger number of undocumented workers—although certainly those persons are all over the United States.

But it seems to me in reading or getting a look at some of the materials on the regulations that the Department of Labor is developing regarding the new H-2A program, it looks to me like it is going to be business as usual, which is not only disappointing but I think unacceptable to all of us. What we were doing was streamlining the H-2 program so it would work, and the H-2 coalition, a group of very interesting groups, were very helpful. The House put together the H-2 coalition approach. It was good. The Senate embraced every word of it. We did not change anything, and it got in during the conference and now it is in the law.

Now, I hear things like, "the H-2 program is a bracero program." Well, that comes from the same bunch of people that have been driving us crazy since we started; who admittedly, never wanted anything anyway and now have invented a new magnificent diversion. H-2 is not bracero. Bracero is offensive to all of us, but H-2 will work if we take it out of the mentality of Department of Labor activity through several Presidents. They have not let it work, and that is not this administration; that is every administration. That is why we came to that point.

But in reviewing your draft, I note this persistent reference to prior Department of Labor practices in the H-2 program, and yet our intent—and it is a clear one, there is really legislative intent here—is to streamline that program, make it usable for growers. I would appreciate knowing from you how this program will become easier to use.

Mr. Baroody. Senator, let me say, first of all, that it is not our intent, if by business as usual, you mean to make no substantial changes. I think the Congress was quite clear in specifying certain changes by way of streamlining the program. And we have prepared what you alluded to, Senator, I should stress this preliminary draft material. I said in my prepared remarks that it is undergoing some fairly finite scrutiny still at the department, and in addition, we have pending follow-on interagency consultations. They will not be final even as an NPRM until we have completed that. We are admittedly also on a fast track.

But all of that is by way of saying that we intend, and we think that the Congress intended for us to intend, to make this program far more accessible to growers. The balance, as you know, Senator, is always a difficult and contentious one to strike between making it accessible to growers in a meaningful way and protecting the interests of American workers. But we think that the minimum filing period, the shortening of that in IRCA from 80 to 60 days, the requirement up front that the Department of Labor respond to an applicant within 7 days and indicate to him whether his application is received as complete or not, is by itself an important step because it precludes the possibility that, for whatever reason, an applicant will be kept on a string, if you will, for an interminable period of time and told only after it is too late for him to go through and meet other requirements for certification that his initial application is not accepted.

In addition, there are fail-safe mechanisms to establish 72-hour redetermination hearings and also for an expedited appeal process on a de novo basis. We think those and other provisions in the statute dictate ways, real ways in which we must streamline the program. In addition, we are looking for and considering, particularly with respect to the first-time user, that we maximize flexibilities there so that the determination with respect to a first-time user as to whether he will be certified or not will be based solely on the determination as to whether there is a real solid case for the need for foreign workers, not on whether or not he has filled out his paper work accurately and timely.

So we think that particularly with respect to first-time users, because of this long-standing perception that the program is unworkable, we need to make sure there is maximum flexibility within a proper regulatory scheme to make it work.

Senator SIMPSON. Well, indeed, that is heartening to know that. Of course, I know and am well aware of what the statutory provisions are, but I hope the department is going into the regulatory scheme of it to make the program more usable—the first-time user provisions are a good example of that. But I want you to know that easy use of H-2 came through very clearly in conference, especially in the House; when the House put the H-2 coalition package in the House bill, that helped make it move over here again.

Then we must remember that eventually the SAW workers are going to be terminated. I doubt also that replenishment will ever take place. I think there will be enough people to do the work under SAW-1 and SAW-2, so eventually in this time—in the sixth, seventh years—we hope we have the H-2 program, the expedited H-2A program, working like a clock.

That is what we want to do: that you have proper housing, that you have proper compensation, that you have all the proper things that we have been seeking for these people.

So I thank you, sir, for that. Now, if I can come to Mr Wilson, with regard to the seasonal agricultural worker program: that is SAW-1, SAW-2 and replenishment. That was designed to accommodate the labor concerns of producers of perishable agricultural commodities. I now understand that there is interpretation in the department of the statute to include some crops that are neither fruit nor vegetable, and some that are not even perishable. I think that that is a bit unfortunate. We had in the Senate bill a pretty good definition of perishable. The Schumer program has broadened significantly that definition of perishable commodity, so now I understand that we are talking about Christmas trees and potatoes and wheat as perishable commodities.

Could you give us some examples of the categories in what you are doing there with regard to these regs?

Mr. WILSON. Senator, we have not yet finalized that determination. Let me just say that the statute says that we have to put fruits and vegetables of every kind, and then it said we should also take a look at other perishable commodities.

Senator SIMPSON. That is under Schumer language.

Mr. WILSON. This is the statute as it is currently written.

Senator SIMPSON. But under special agricultural workers.

Mr. WILSON. Yes, sir. So we are taking a look at that, and we plan to use the same criteria for other perishable commodities that would apply to fruits and vegetables.

For instance, we would be thinking in terms of seasonal field work. We would be looking at commodities where labor is critical at certain phases of production.

We have not gotten to the point yet where we have that final list determined, but we are doing our best to fulfill what we see as the intent of the Congress.

Senator SIMPSON. I think that is very important. As I say, this is one rather extraordinary piece of legislation in that legislative intent should not be at all difficult to discern. I think it is the only bill I have seen in 24 years of legislating where there should be less confusion about what its legislative intent was, because the parties are all here and the debate was very clear. Barney Frank's legislative intent is well known, as is that of Al Simpson, Ted Kennedy, Dan Lungren.

It is a very interesting process, and monitoring the whole thing has been the Commissioner of Immigration and Naturalization Service. I think it is very important that we stick with what we all intended to do. It is easy to find out. You can go right there and walk in the door or pick up the phone and say, "What did you mean when you did this," and begin to form a legislative intent with the agency involved in it right from the beginning.

I just want to ask one more question of you, sir. Have any of the growers of these non-perishable crops become dependent—I named Christmas trees, and so on—have they become dependent upon an illegal work force, as we have found to be the case with regard to growers of some perishable crops in the Western United States?

Mr. WILSON. Well, I do not know how you would define dependence. I think there are a lot of commodity groups out there who certainly are in a position where they are labor intensive. They employ a lot of labor to produce these commodities, and many of those have used illegal aliens in years gone by. So we are sensitive to the needs of those people.

Senator SIMPSON. On some of those items that I mentioned, Christmas trees, potatoes, wheat, and even sugar beets—there are a large number of those in my State—I want to know whether we have reached a dependency level that they cannot exist or cannot turn a profit unless they have an illegal work force. That is the issue, and if you could furnish that to me at a later time, I would appreciate that.

Mr. WILSON. Well, we hope to have the regulation published in the near future.

Senator SIMPSON. I would like the information, if your research shows, that these other producers of a commodity have been dependent upon an illegal work force. If they were, they did not surface before.

Mr. WILSON. We will try and get that to you, Senator.

Senator SIMPSON. Thank you.

[Information follows:]

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

1987 MAY 11 AM 10: 01

MAY 12 [illegible]

05 MAY 1987

Honorable Alan K. Simpson
United States Senate
Washington, D.C. 20510

Dear Senator Simpson:

During the recent oversight hearings of the Immigration Subcommittee of the Senate Judiciary Committee, you requested information on the dependency of Christmas tree, sugar beet, potato and wheat growers on illegal alien labor. This is in response to that query.

There is a lack of data on the number, location, and employment of illegal alien workers in this country. Estimates vary widely, and are based largely upon anecdotal information.

Our inter-agency coordinating group, comprised of the Departments of Agriculture, Health and Human Services, Labor, State, the Immigration and Naturalization Service, and the Social Security Administration uses a working estimate of 3-5 million illegal aliens in this country, of whom 10 per cent, or 400,000 are estimated to be engaged in farm work. It is recognized that this is a very rough estimate.

Christmas trees are produced throughout the country. In certain areas, particularly the northwest, Christmas tree producers indicate that they are heavily dependent upon illegal alien workers. The heaviest labor demand is in the spring during the shearing operation and in the late fall for the harvest. Since these are off-season times, Christmas tree producers utilize labor usually found working in fruits and vegetables and probably are as dependent upon illegal alien workers as are producers of fruits and vegetables. We estimate that level of dependency to be rather high. In those areas which are able to use local labor, the dependency would be expected to be low.

Potato growers appear to be moderately dependent upon illegal alien labor, with certain areas of the country being highly dependent. Following Border Patrol activity several years ago, Idaho growers began using the H-2 program and are expected to use 2,000 foreign workers (40 per cent of the irrigators) this year. Assuming that some of the present work force is illegal, this suggests that more than half of this labor force are aliens. Many potato growers also raise sugar beets, and therefore there is probably considerable overlap between potato workers and sugar beet workers.

Sugar beet producers appear to be moderately dependent upon illegal alien workers. The California Beet Growers Association, Ltd. (CBGA) polled their directors to develop an estimate that of 5,800 full time workers, 1,400 or 24 per cent are illegal. Of 12,200 part-time workers, they estimated 2,400 or 20 per cent are illegal. Interestingly, CBGA stated "...some workers originally thought to be legal by Directors have now asked for paperwork to aid them in obtaining legal status in this country," and "one of the problems experienced by the Directors is that all of the people were able to provide social security cards, driver's licenses and other documentation to show they were legal when hired." This illustrates some of the difficulty in estimating dependency upon illegal alien labor.

Wheat production and harvest is highly mechanized and generally has a low labor intensity. Hired labor, frequently illegal alien workers, are used in arid regions as irrigators. Typically, however, wheat is produced by family farmers who utilize very little hired labor. Several years ago, following Border Patrol apprehensions among Canadian custom combiners, the custom combiners began to utilize the H-2 temporary foreign workers program. In 1985, 106 foreign workers were issued visas as H-2 workers to do custom combining. Our impression is that the degree of dependence upon illegal workers in wheat farming is quite small.

I hope this information will be helpful to you. Don't hesitate to ask if we can be of further assistance.

Sincerely,

Ewen Wilson

EWEN M. WILSON
Acting Assistant Secretary
  for Economics

Senator SIMPSON. Phil Hawkes, just a couple of questions as I am languishing in all this extra time as a member of the minority.

Let me ask you: you have been through this entire procedure, too, and have been a very steady hand. I understand, from what I am hearing that the State and local governments when we set this up, $1 billion a year—and we knew that that are attempting, some of them, to document their expenditures under the legalization program in such a way as to disclose that their liabilities appear immense and the revenues non-existent. I think that is unfortunate, but I know that that is the way it works sometimes.

Will this population of newly legalized alien persons contribute any tax revenues to State and local treasuries? It would seem to me that there is a push for me of one hundred percent Federal reimbursement—as if these people, after this extraordinary act of grace, are going to produce nothing. That cannot be, and I would like your thoughts on that.

Mr. HAWKES. Senator, it seems that the State Legalization Impact Assistance grants, the $1 billion from the law, that those are to help defray the costs to State and local governments of providing services to newly legalized aliens that were, in fact, caused by the Act.

The legislative history seems to imply that we are talking specifically about those costs to State and local governments that would not have been experienced if it had not been for the passage of the Immigration Reform Bill.

I think some of the preliminary estimates we have seen from a couple of counties seem awfully high, and I think that as you suggest they are overlooking the fact—or they may well be overlooking the fact—this is a working population. In order to qualify for the provisions of IRCA, they have to demonstrate an employment history since they have been in the United States, and they have to maintain an employment history during the time of their legalization.

It is hard to imagine that these people live in, earn and contribute to our society without paying some of the same taxes that the rest of us do. I think sales tax and, indirectly, property tax as well as income tax are probably paid by most of them.

I think there has been a tendency, in part because of the recent refugee flow, to view aliens as an economic detriment, on the deficit side, rather than on the side where I think that they belong. It is kind of interesting that, as a country of immigrants where we all point to our immigrant ancestors and say we are what we are because we all came from some place different, that this new population poses an incredible liability to the American taxpayer, and that huge amounts of money are going to be needed to offset that liability.

I think the $1 billion that has been appropriated by Congress, if literally applied to the incremental costs caused by the bill, would be sufficient.

Senator SIMPSON. Well, I think that is a very important issue to realize, that it was not intended to be a 100 percent Federal reimbursement as if these people did not contribute to the State and local communities, and that is one we have always had to wade through. I think that is what I wanted to obtain there.

Let me ask you another question. The legalization reimbursement section asks for a State to submit its total expenditures on newly legalized aliens to the Secretary of HHS. However, Congress included this factor in order to provide a more equitable distribution of the $1 billion per year. It did not intend to make that money appear to be a 100 percent reimbursement. That, at least, is this legislative intent that I recall about that, because the classic 100 percent Federal reimbursement program relies on documenting of such expenditures.

But is your department aware that Congress did not intend a 100 percent Federal reimbursement program?

Mr. HAWKES. Yes, we are very aware of that. In fact, in preliminary discussions with States, at this point I do not think anyone really knows with any degree of certainty what their costs are going to be. Certainly in talking to people from counties that have a large potential population of new aliens, they really are not aware of the full extent of what these costs may be. Since most of the population estimates are pretty soft as well, it is very hard at this point to project the full range of costs likely to be felt.

Certainly, there is no intent on our part to take that whole range of costs into account and try to reimburse that 100 percent. We are using it more as an index of the amount of money that States spend in comparison to each other on this population.

Senator SIMPSON. I thank you for that. I might have a question of Mr. Disler, please.

On the Frank Amendment, Barney's effort there: he worked very hard on this legislation; indeed, he did. It was very helpful throughout. He is more fun to work with than the average guy. At least you know you are dealing with a spirited human being out there on the other side, and he is that.

The Frank Amendment is a serious, serious issue in the bill. It was included in there based on the argument that employer sanctions might cause employers to avoid hiring legal residents or legal persons who "look or sound foreign." And yet such action, if it occurs, is surely going to be what in everyone's definition would be an intentional act.

Mr. Disler, do there exist any potential actions that an employer could take, because of employer sanctions now, that are unintentional, but would still have a "disparate impact" on "intending U.S. citizens"?

Mr. DISLER. Not flowing from the sanctions, I would think not. In fact, I think that that would be something of a contradiction in terms. As we have tried to explain when we have had the opportunity, and as we have indicated in the preamble to our proposal, Congress's thrust in adopting the anti-discrimination provisions is quite clear. It was the concern you described, Senator Simpson, that an employer thinking that in order to avoid sanctions, he ought to turn away somebody who looks or sounds foreign. That is inherently an intentional act. It necessarily reflects intentional discrimination.

It is fairly clear that that is the kind of concern that Congress had when it enacted this language, and we think that that is reflected in the operative language of the anti-discrimination provision as well as such legislative history as is available.

Senator SIMPSON. Well, I think it is the belief of many of us that employer sanctions alone are not going to be the cause of discrimination based upon national origin or intending citizenship. I would expect that Congress will be considering in 3 years' time under the law—when the third annual GAO report comes in—that we will be considering a resolution to terminate the effect of that because it would be unnecessary.

Could you suggest for the committee how the GAO might go about documenting the absence—a tough one—of any new discrimination caused by employer sanctions?

Mr. DISLER. Well, I think that the GAO's task in that regard is not one without some difficulties in trying to attribute where certain discrimination is coming from. However, I think there may well be, I think there ought to be, at least some measures that they could at least begin to work with.

For example, the whole new category of citizenship status claims, that is a new one. There ought to be an ability to take a look at not just the number of those kinds of claims that come into the Special Counsel, but what the Special Counsel does with them—whether the Special Counsel determines that they are without merit, or if they have merit, and then what administrative law judges do with them. Because I think that based on what we know thus far, it is likely that if there is going to be that kind of discrimination based on citizenship status, the tie to sanctions might be able to be shown that way.

One other way might be to touch base with the EEOC, which has a very large role in this enforcement scheme, to see if there is any upsurge in national origin claims around the date that sanctions become effective or earlier, what areas that they might be occurring in, and what the EEOC has been able to determine in their investigations about the sources of that discrimination.

But I think there are some indicia that can probably be helpful to GAO as this thing gets on track, although I do think that it is a pretty full task for GAO.

Senator SIMPSON. Well, indeed, it will be a full task, and it will be one of oversight because it has an impact on everybody in the United States, the bill. I think that has not always been recognized as we have gone through this 6 years.

I will be looking forward to working with Ted Kennedy and Paul Simon. We are now the three members of the Subcommittee, and it will be a pleasure to work and be supportive of what I know they believe in, too.

Let me just ask, there is this one issue that keeps coming back. It is, again, one of those areas that you have heard me babble on about, emotion, fear, guilt, and racism. Those are the things that people use in this arena on this issue, always have used. Somehow we managed to, I think, maturely get through that, and certainly that was because of the work of the people I just mentioned, Republicans and Democrats alike: Ham Fish, Pete Rodino and Mazzoli and Lungren; and over here those people that you have seen before you today.

But it is the issue of the legalization fee. Now, that really is a fascinating thing to me. The Senate, the House, I remember the conference that failed; that conference language in the conference that failed was clearer than anything, but we did not have to leave it that clear. You have put it into the record now, and I hope all will see that.

From the inception of the legalization, including the work we did with the Select Commission on Immigration and Refugee Policy—and that was four Senators who were on that: Senators Kennedy, DeConcini, Mathias, and myself—always intended that the legalization program largely pay for itself. You can argue the word "largely." You can argue 100 percent or 90 percent, but it was not intended that it not be pretty close to the mark.

Importantly enough, and as you have indicated and placed in the record, the legalized alien is going to pay a fee comparable to that required of one immigrating legally. That, I think, escapes, handily escapes, those who begin to talk about whether it can be afforded, knowing that the law before we ever came on the scene in this legislation said that you could not even apply if you were a public charge; and then the irony of it all where some have paid $700 or $1,000 or $2,000 to a smuggler to come into the United States. I was at the Kennedy School in Boston the other evening, in a debate with Congressman Bill Richardson, another remarkable player in this, and the issue was that we knew what we were doing and we knew that there was a cost, but we also knew that we were pushing to the front of the line millions of people while there are still hundreds of thousands people waiting in line under legal immigration to come to the United States of America. There is a huge backlog.

That is something that we were all cognizant of, and for those in that backlog that fee is the same, $185. The Senate reports for the last three Congresses reflect that intention. The manager's statement reflects that intention.

Now, just for the record, how much would an alien pay to receive a visa as a legal immigration from abroad? That is 185; is that correct?

Mr. Nelson. That is correct.

Senator Simpson. And how much would an alien pay if he had a spouse and two dependent children if he were applying legally from abroad?

Mr. Nelson. It would be three times 185.

Senator Simpson. And if we would have a spouse and two dependent children, that would be three times that you are saying.

Mr. Nelson. Right.

Senator Simpson. Four times that?

Mr. Nelson. For each person, it would be basically a $185 fee, somewhat different than the cap that we do propose on the legalized alien.

Senator Simpson. That is correct. If that cap on an immigrant visa of 2 adults and 3 children under 18, the legal immigrant visas would be about $925, would it not?

Mr. Nelson. That is correct.

Senator Simpson. And that is a conflict there with those who have been waiting in line legally, so I think it shows the fairness of what you tried to do. And you do believe that this fee meets the requirement of largely supporting the legalization program?

Mr. **Nelson**. We do, Senator Simpson. If our calculations are right, it will cover the entire cost. It is what we believe Congress intended, and that is, of course, what you are aiming for. Now, it is obvious you do not know exactly how many will come forward, so you might be high or low on that. We think we know most of our costs, but, of course, those can vary.

As best as we can determine, the fee structure that we have set forth meets the congressional intent as indicated, equal to the immigrant fee, and will cover the cost.

Now, should we have a surplus—and we realize that does not happen too often in this town—but should that occur, there will be a second step, as we know, the permanent resident application. Any overage, if there is one, would be kept in escrow, so to speak, and applied to any later permanent residencies. There would be a fee charged the second round also. So any overage would be credited to the applicants there.

Obviously, if there is a deficiency—and we hope not—we would have to seek additional fees, either at the permanent residence stage or come to Congress for a supplemental.

Senator **Simpson**. Well, I am going to conclude here. Senator Kennedy will not be able to return, and so I will conclude. But an irony, a true irony is that some of the groups complaining about the fee are going to be charging their own fee. I hope the American public is able to hear that, that this government is going to pay, what, $16?

Mr. **Nelson**. $15 and then another dollar for some training costs for some of the entities.

Senator **Simpson**. Now, that is going to go to the groups that are going to assist with the legalization.

Mr. **Nelson**. Yes.

Senator **Simpson**. Have you described that, since I have not been here, these groups that are designated by you to do this. Not only are there the 107 INS centers, but the other designated groups?

Mr. **Nelson**. Yes. Senator Simpson, we have put a form of contract that is being disseminated among the entities that could qualify. It sets forth many requirements, one of which is that they must, in order to be qualified a designated entity by the Immigration Service, cannot charge more than $75 themselves for their own fee plus another $25 they can charge for costs for fingerprinting and photographs. So that is $100.

Then, in addition to that, they will receive the $15 or $16 from us, so they would be getting $115. It is interesting. Our 185, a good part of that are fees we pay—the $15 to the voluntary agencies, probably $30 or so to the FBI and other organizations for record checks, and a number of other outstanding fees. Of course, we have got all the rent and the other things to pay, too.

It is a little ironic, as you say, that some representatives—and I think it is important to indicate that it is limited—but some, I think, are speaking out of both sides of their mouth. It is unfortunate when they will be receiving $115, and some would like to get a lot more than that. And if you are talking about a million applicants, that would be $100 million to these agencies. We are talking about a likelihood of 2 million, so that is $200 million that they are going to get.

We are not complaining, but I think it is a little ironic that some of them are. It is only limited, but a few have been more vocal.

Another point that I think is worth mentioning for the record, we received almost no complaints from any illegal aliens about paying this fee. In fact, many have indicated not only do they feel it is a tremendous benefit they are getting and well worth it, it is also interesting we are charging the same fee, the $185, for the SAW workers.

Now, as you know, Senator Simpson, on that there is no specific language in the immigration bill for that, and we are just using the general authority of the government under other statutory authority to charge a fee, and we are charging this same fee. We have heard absolutely no complaints from growers, labor unions, or potential aliens there either.

So I think there has been a lot of hullabaloo by very few about an issue that really is not a valid issue.

Senator SIMPSON. Well, I think it is unbecoming of groups to make that criticism when they themselves are going to be taking $100, perhaps, from an illegal, undocumented person in legalization. So I think that is important to share.

Well, I believe that will conclude. There will be questions submitted for the record by several members, Senators DeConcini, Biden and other members. We will have questions for the record, and we will reconvene the hearing depending upon the response there.

[Information follows:]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

CO 703.1192

AUG 0 6 1987

Honorable Joseph R. Biden, Jr.
Chairman
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Chairman Biden:

Enclosed are follow-up answers to questions from the March 24, 1987 Authorization/Oversight Immigration Hearing of the Senate Committee on the Judiciary.

Should you have any other questions, please do not hesitate to contact me.

Sincerely,

John R. Bolton,
Assistant Attorney General

Questions from Senator Kennedy

This question has arisen from the Los Angeles area.

Applicants for legalization are required to undergo medical exams to determine whether they are inadmissible on medical grounds. In the Los Angeles area, where the INS expects over one million applications for legalization, there is some concern that there may not be enough certified civil surgeons to perform the exams. This could pose a special problem for undocumented persons who must apply for legalization during the first 30 days of the program.

> HOW MANY CIVIL SURGEONS ARE CURRENTLY CERTIFIED TO PERFORM THE REQUIRED MEDICAL EXAMS BOTH NATIONALLY AND IN THE LOS ANGELES AREA?
>
> There are 555 civil surgeons currently certified to perform the required medical exams nationally. There are presently 98 physicians within the jurisdiction of the Los Angeles District Office certified to conduct physical examinations of aliens seeking benefits under the Immigration Reform and Control Act of 1986.

WHAT STEPS IS INS TAKING TO ENSURE THAT THERE WOULD BE A SUFFICIENT NUMBER OF CIVIL SURGEONS TO PERFORM EXAMS?

Mr. Ernest Gustafson, District Director in Los Angeles has expressed confidence that his district has sufficient physicians to conduct the required physical examinations and that applicants for legalization will be adequately served.

The Los Angeles district has an additional 200 applications for civil surgeons which all or a part of, if needed, will be certified by the District Director to perform medical examinations of aliens applying for benefits under the Immigration Reform and Control Act of 1986.

HOW WILL INS HANDLE CASES IN WHICH UNDOCUMENTED PERSONS WHO ARE UNDER TEMPORARY STAYS OF DEPORTATION ARE UNABLE TO UNDERGO THE REQUIRED MEDICAL EXAM PRIOR TO THEIR DEADLINE FOR FILING LEGALIZATION APPLICATIONS BECAUSE OF A SHORTAGE OF CERTIFIED CIVIL SURGEONS?

The certification process is relatively simple. It commences with a request for certification by the physician to the District Director. The physician is required to have a medical license from the state in which he/she must have at least 4 years experience.

The certification process permits the Immigration and Naturalization Service to maintain control over the costs and quality of the required physical examinations.

Questions from Senator Simpson

1. I AM CONCERNED THAT THE PUBLICATION OF REGULATIONS AND THE BROAD DISSEMINATION OF INFORMATION ON THE BILL HAS NOT MOVED AT A BRISK PACE. ON WHAT SPECIFIC DATE WILL WE SEE FINAL REGULATIONS FOR EMPLOYER SANCTIONS AND LEGALIZATION PUBLISHED?

IN ADDITION, WHEN WILL EMPLOYER BROCHURES, "800-NUMBER" INFORMATION LINES, AND OTHER PUBLIC RELATIONS MATERIAL BE AVAILABLE TO THE PUBLIC IN ALL PARTS OF THE COUNTRY?

IS THERE A SPECIFIC REASON FOR THE AMOUNT OF TIME TI HAS TAKEN TO COMMENCE THE "PUBLIC EDUCATION PROGRAM?"

Final regulations for the Immigration Reform Act were promulgated on May 1, 1987. The Telephone Information System with its "800" number was tested and began operation on May 5, 1987. A nation wide Public Information Program is an extraordinary undertaking under any circumstances and one which must be preceeded by publication of Final Rules and Regulations and the Federal Procurement Process. This program was accomplished by any standard in record time. The following activities have been planned for the Public Education Program.

Conduct five national and over 300 regional press conferences and interviews with the news media to answer questions about Employer Sanctions.

Conduct more than 1,000 meetings with employers and employer groups through out the United States to discuss the new law.

Reviewed more than 4,000 written comments on the employer sanctions provisions alone during the unique and open two step comment period before implementing new regulations;

Utilizing Satellite technology, broadcast excerpts of the news conferences to local television news organizations around the country. Provide local radio news organizations with live interviews and taped actualities of service spokesmen describing the employer sanctions process;

Establish and develop messages concerning employer sanction toll-free 1-800 telephone information system in both English and Spanish;

Design and produce, with a maximum degree of public comment, the I-9 Employment Verification Form and the Employer Handbook. Mail this Handbook to 6.6 Million employers during July.

Distribute 20,000 copies of the Handbooks to local and regional INS and Department of Labor offices, and other private and public associations and professional and occupational groups;

Publish the I-9 Employment Eligibility Verification form and the Employer Handbook in the Federal Register in June;

Present over 1 million I-9 Employment Eligibility Verification forms for use in Government Printing Office Bookstores.

Produce and distribute 500,000 copies of the Employer Brochure with detachable poster and Employment Eligibility verification form far distribution during the months of March and April;

Produce and distribute two national bilingual television public service announcements (PSA's) on employer sanctions and Legalization to be distributed to 18 major national markets with population of 1 million of more, or 45% of the adult U. S. population.

Produce and air a sixty-second paid radio commercial in Spanish and Polish to 90% of all hispanic adults and 2.5 million polish speaking adults. Total adults reached: 18.4 million.

Produce and distribute a fifteen minute instructional videotape on the employer sanctions verification process.

Produce and place a newspaper ad with a full sized I-9 Employment Verification Form, and accompanying descriptive text in eight newspapers including: The New York Times, USA today, The Wall Street Journal, The Washington Post, The Miami Herald, The Houston Chronicle, The San Francisco Chronicle, and The Los Angles Times. This circulation will reach 7,552,404 readers;

Mail Employer Handbooks to all 535 members of Congress in their Washington Offices with a second mailing to all members's district offices.

Mail Employer Handbooks and a personal letter to all of the nation's governor's including territories.

Mail Employer Handbooks to 274 state legislators.

Mail Employer Handbooks to the 100 largest County commissioners and officials.

Mail Employer Handbooks to 109 cabinet officers and heads of federal independent agencies;

Provide copies of the Employer Handbook and consulted with the Federal Office of Personnel Management;

Provided copies of the Employer Handbook to the Staff Directors of both the House and Senate Immigration Sub-Committees for distribution.

Distribute a copy of the Employer Handbook to more than 36,000 public libraries, which can be reproduced for the personal use of private citizens.

Provide copies of the I-9 Employer Handbooks to the U. S Chamber of Commerce, National Association of Manufactures, National Federation of Independent Businesses, AFL-CIO, and a wide variety of other trade organizations, associations and Washington representatives;

Provide photo reproducable copies of the I-9 form, the Employer Handbook and the regulations to the Small Business Legislative Council, to be distributed to over 400,000 small businesses nationwide;

Coordinate with and provide 300,000 copies of the Employer Handbook for distribution through the local, Regional, and national offices of the U. S. Department of Labor, U. S. Department of Agriculture, U. S. Small Business Administration, U. S. Department of Education, U.S. Department of State, Department of Health and Human Services, Social Security Administration, Equal Employment Opportunity Commission, and the U. S. Department of Justice Office of the Special Counsel.

2. THE SEARCH AND RECRUITING INDUSTRY IS CONCERNED THAT THE REGULATIONS IMPOSE A VERIFICATION REQUIREMENT ON ALL PROSPECTIVE EMPLOYEES WHO ARE "RECRUITED" BY THE INDUSTRY, AS WELL AS THOSE WHO ARE REFERRED TO AN ULTIMATE EMPLOYER. I UNDERSTAND THAT ONE OF THESE FIRMS, MANAGEMENT RECRUITERS INTERNATIONAL, MAKES RECRUITING TELEPHONE CALLS TO BETWEEN TWO AND THREE MILLION PERSONS ANNUALLY, LESS THAN ONE PERCENT OF WHOM WOULD ACTUALLY BECOME HIRED. AS I RECALL, IT WAS OUR INTENT TO INSURE THAT ALL PROSPECTIVE EMPLOYEES REFERRED BY A RECRUITING FIRM WOULD BE CHECKED FOR EMPLOYMENT ELIGIBILITY BEFORE REFERRAL, BUT I DO NOT BELIEVE WE EVER INTENDED THAT EVERY "RECRUIT" TELEPHONED BY THE AGENCY WOULD BE SUBJECT TO VERIFICATION. WHAT IS YOUR UNDERSTANDING OF THIS?

INS' understanding is that, like employers, persons that recruit or refer for a fee are responsible for determining the identity and employment eligibility of all the individuals that they actually recruit or refer for prospective employment. Certainly if they call an individual and he or she is uninterested in the offer of employment or in being recruited, no documentation need be completed. (To earn their fees, these entities are doing more than serving as simple middlemen on the telephone; they actively match job qualifications to job needs, write and re-write resumes, etc. When these entities refer persons in the medical field, for example, they check the physician's credentials to assure that they are licensed and in good standing with county medical board. If they refer individuals for employment with defense contractors and United States citizenship is required, that question is asked prior to referral.)

The verification of documents comprehend in the law has to take place in person (face-to-face) to assure that the documents presented truly relate to the individual or that they appear reasonably on their face to be genuine. We have received a number of comments from the employment recruiting and referring industry concerning the need for face-to-face verification. As most of these referrers deal with clients telephonically and at a long distance, they cannot readily accomplish this.

We are actively seeking a methodology to address this situation. The mechanism adopted should not constitute an undue burden on recruiters or referrers, but must also satisfy the law's intent to protect against fraud. We have several options under view:

1) Permit the hiring entity to act in a limited capacity as the agent for the recruiter. Such a method might necessitate the employer to complete two verification forms (one to be returned to the referrer for inclusion in its files);

2) Permit personnel of national organizations representing referral agencies to act as agents for their clients. Such personnel could conduct the verification process on behalf of the distant referral entity;

3) Establish a Service approval process to pre-verify individuals referred by Service-approved referral entities. Under such a possible process, a referrer recognized and approved by the Service would be permitted to accept by mail a Form I-9 with accompanying photocopies of identity and work documents that had been executed by the individual before a notary public;

4) Permit an individual recruited or referred for employment to present photocopies of documentation to a notary public who would certify the accuracy of the photocopy by comparison with the original document. The employee would also effect his attestation on the employment eligibility form before the notary. The form and photocopies would be mailed to the recruiter or referrer who would then complete his part of the form and retain it for the period of time required in the law.

3. THE CONGRESS LAST APPROVED A LARGE INCREASE IN THE BORDER PATROL FOR FY 1985. DURING THAT FISCAL YEAR, I UNDERSTAND THAT 24 CLASSES WERE CONVENED TO TRAIN NEW BORDER PATROL OFFICERS. HOW MANY SUCH CLASSES WILL BE RUN DURING FY 1987 AND FY 1988 TO RESPOND TO THE CONGRESSIONAL MANDATE OF A 50% INCREASE IN BORDER PATROL MANPOWER ABOVE FY 1986 LEVELS?

The Border Patrol will conduct nine basic training classes in FY 1987 and 14 classes in FY 1988. There will be approximately 1,104 additional Border Patrol agents hired by the end of FY 88. The actual on duty strength from the new hires is anticipated to be 828 officers after factoring out their attrition while at the academy or post-academy duty. The number of classes which will be conducted in FY 1987 and FY 1988 will be based on a continuous assessment of agent attrition both at the academy and from the field, as well as a review of the overall fiscal posture of the Patrol and its impact on staffing levels during the next two years.

4. BASED ON INS BUDGET REQUEST FOR FY 1988, HOW MANY INVESTIGATORS NATIONWIDE WILL THERE BE WITH THE SOLE RESPONSIBILITY OF ENFORCING EMPLOYER SANCTIONS? HOW MANY INVESTIGATORS WILL HAVE THE SOLE RESPONSIBILITY FOR INVESTIGATING FRAUD IN THE LEGALIZATION AND SPECIAL AGRICULTURAL WORKER PROGRAM?

The Investigations program is not currently divided into units whose sole commitments are to one type of violations versus other types. We believe this allows enforcement program flexibility to meet the most egregious violations in existence in a particular location. To assure commitment to the critical programs of employer sanctions and fraud deterrence, the Commissioner's Priorities Management Program will continue to assure that a high percentage of investigative resources directed to the highest impact level work (Impact Level I) such as targeting fraud faciltators, employers violators, alien narcotics violators and dangerous criminal aliens and organizations.

5. **INS'S DRAFT REGULATIONS ON EMPLOYER SANCTIONS DEFINE "EMPLOYMENT" TO EXCLUDE INDEPENDENT CONTRACTORS. HOW WOULD INS PROSECUTE AN INDEPENDENT CONTRACTOR WHO KNOWINGLY HIRES ILLEGAL ALIENS, AND HOW WOULD YOU PROSECUTE AN EMPLOYER WHO KNOWINGLY USES AN INDEPENDENT CONTRACTOR TO EVADE HIS RESPONSIBILITY UNDER THE LAW?**

First, it is not a violation, under the employer sanctions provisions, to knowingly hire illegal aliens UNLESS, the alien has not been authorized to work in the United States. It should be noted that illegal aliens can be authorized to work in the United States and that a violation only occurs under the law when the employer knowingly hires an alien not authorized to work in the United States. Therefore, if a independent contractor knowingly hires an alien not authorized to work in the United States, such action will constitute a violation of section 274A of the Act, and subject the independent contractor to same penalties, that an employer would have been subject to if he/she had knowingly hired an alien not authorized to work in the United States.

INS will prosecute this employer in the same manner it would any other employer or recruiter or referred for a fee who knowingly employs or refers an alien not authorized to work in the United States. In other words, if the INS can prove by a preponderance of the evidence that this employer use of an independent contractor was for sole purpose of circumventing the law, his/her actions will constitute knowingly hiring an alien not authorized to work in the United States, although the individual not authorized to work in the United States is an employee of the independent contractor and not an employee of the person that entered into the agreement with the independent contractor.

6. THE IMMIGRATION REFORM AND CONTROL ACT REQUIRES THE PRESIDENT TO "PROVIDE FOR THE MONITORING AND EVALUATION" OF THE USE OF PRESENT DOCUMENTS TO DETERMINE EMPLOYMENT ELIGIBILITY IN THE UNITED STATES." WHICH AGENCIES SHALL CARRY OUT THIS RESPONSIBILITY, WHAT SPECIFIC TASK FORCES OR AGENCY OFFICIALS HAVE BEEN APPOINTED TO COORDINATE THIS ACTIVITY, AND WHEN WILL THESE OFFICIALS BEGIN THEIR REVIEW OF OUR PRESENT DOCUMENTS?

INS has already begun an internal review process to determine whether the number and kind of work authorization documents which we issue may be standarized.

However, in a broader context, an Interagency Coordinating Group chaired by Commissioner Alan C. Nelson and consisting of representatives from the Departments of State, Health and Human Services, Labor and Agriculture has been formed. The working group meets biweekly to discuss implementation issues which affect their agencies and to coordinate implementation strategies and initiatives, It can be anticipated that among the issues which will be addressed by the working group is an evaluation of present documents and the security of the employment eligibility verification system now in effect.

Questions From Senator DeConcini

1. COULD YOU TELL US THE CAUSE OF THE DELAY IN PROMULGATION OF THE EMPLOYER DISCRIMINATION REGULATIONS?...DOES THIS DELAY EVIDENCE AN UNWILLINGNESS ON THE PART OF THE ADMINISTRATION TO IMPLEMENT THE SPECIAL COUNSEL PROVISION AND MERELY CONTINUE THE ADMINISTRATION'S OPPOSITION TO THIS SECTION WHICH WAS SO INEVIDENCE AT THE END OF THE LAST CONGRESS?

   There has been no delay in promulgation of the employer discrimination regulations. Any promulgation of regulations based on a new statute necessarily requires an orderly process which includes a review and study of the statutory language as well as circulation of ideas and draft language within the executive branch. The Notice of Proposed Rulemaking concerning the anti-discrimination provisions have been timely published. The Administration has testified on four different occasions before House and Senate subcommittees as to its strong commitment to implement effectively the anti-discrimination provisions of the Act. As Deputy Assistant Attorney General for Civil Rights Mark R. Disler testified on March 24, 1987 before the Committee, "...now that these provisions have become law, the Department is moving to establish the necessary structure for the Office of the Special Counsel. It should be at the outset put to rest any fears that we lack commitment in this endeavor. The fact is that the Administration, the Justice Department and all of us involved in this project are dedicated to the full and faithful implementation of the new legislation, including vigorous enforcement of its prohibitions."

2. DO YOU THINK THAT THE "KNOWINGLY AND INTENTIONALLY" DISCRIMINATED STANDARD IS ADEQUATE TO PROTECT THE MILLIONS OF AMERICANS OF RECENT FOREIGN DESCENT WHO COULD BE SUBJECT TO DISCRIMINATION BECAUSE OF THE IMMIGRATION LAWS? HOW DOES THAT STANDARD PROTECT AN INDIVIDUAL WHO APPLIES FOR A JOB BUT LOSES IT TO A LESS QUALIFIED BUT MORE "AMERICANIZED" INDIVIDUAL? I THOUGHT THAT THIS ADMINISTRATION WAS COMMITTED TO GUARANTEEING THAT ALL EMPLOYMENT DECISIONS MADE IN THE U.S. WERE BASED ON MERIT AND NOT BASED ON PREFERENCES FOR ONE RACE, COLOR OR NATIONAL ORIGIN OVER ANOTHER?

   Because this question closely resembles a question put to Mr. Disler by Senator Deconcini, I am referring to Mr. Disler's response, infra.

3. COMMISSIONER NELSON, I HAVE HEARD NOTHING BUT CRITICISM IN ARIZONA OF THE SERVICES'S IMPLEMENTATION OF THE LEGALIZATION PROGRAM. ALL OF THE PARTIES INTERESTED IN THE PROVISION THAT I HAVE TALKED TO --AND THAT INCLUDES HISPANIC ORGANIZATIONS, VOLUNTARY AGENCY PERSONNEL AND IMMIGRATION LAWYERS-- ARE CONFUSED, FRUSTRATED, AND ANGRY. I UNDERSTAND THAT THE DISTRICT INS OFFICES ARE SAYING THAT THEY HAVE NOT RECEIVED INSTRUCTION FROM THE REGIONAL OFFICES AND THE REGIONAL OFFICES ARE SAYING THAT THEY HAVE NOT RECEIVED INSTRUCTIONS FROM WASHINGTON. WHAT IS THE HOLD-UP? IS THERE ADEQUATE TIME BEFORE THE MAY 5 IMPLEMENTATION DATE FOR THE SERVICE TO ADEQUATELY TRAIN THE INDIVIDUALS WHO WILL ACTUALLY BE WORKING WITH ILLEGAL INDIVIDUALS WHO SEEK ADJUSTMENT OF THEIR STATUS? IS IT POSSIBLE FOR THE VOLUNTARY AGENCY PERSONNEL POSSIBLY TO BE TRAINED BY MAY 5 IF SIX WEEKS BEFORE THAT DATE THE DISTRICT OFFICES CANNOT TELL THEM HOW AND WHEN THIS TRAINING WILL TAKE PLACE?

The Service feels that reports concerning the confusion about the voluntary agencies' responsibilities in the legalization program are linked to some VOLAGS' apprehensions about organizing and implementing their programs rather than action taken or not taken by INS. Once the program started, anxieties disappeared as the VOLAGS began preparing applications for potential applicants. During the planning stages of the program the Service contacted almost all community-based organizations in Arizona in early March 1987, either directly or through their national organizations. The Service provided the organization with detailed information on the cooperative agreement involving qualified designated entities as well as QDE application forms with complete instructions how to complete it, and the INS Outreach telephone number for those needing additional information. As a result of this process, the Service has approved 24 QDE sites in Arizona, most of those community-based organizations. The Service also conducted a successful initial statewide legalization training program in Phoenix which involved 50 participants. Following an assessment of QDE training requirements, the Service will schedule additional training sessions in Arizona beginning in June and continuing on an as needed basis throughout the fiscal year. We will schedule workshops in Phoenix, Tucson and wherever a substantial number of QDEs indicate training is essential.

4. COMMISSIONER NELSON, I DO NOT SEE HOW THE SERVICE CAN POSSIBLY BE READY TO IMPLEMENT THE LEGALIZATION PROGRAM IN A MANNER THAT WILL BE SATISFACTORY TO ME BY MAY 5. IS THERE A WAY SHORT OF ENACTING AN AMENDMENT TO THE STATUTE FOR YOU TO HAVE MORE TIME PRIOR TO THE IMPLEMENTATION DATE? IF NOT, WOULD THE SERVICE SUPPORT AN AMENDMENT GIVING YOU 120 MORE DAYS TO GEAR UP?

The timeframes for implementation of Sec. 245A and Sec. 210 of the Immigration Refrom and Control Act of 1986 are being met. Some 100 offices will be opened, fully staffed and ready to accept and process applications on May 5, 1987, for those who apply under the provisions of Sec. 245A of the Act. The Service will accept and process applications for those who apply under Sec. 210 of the Act on June 1, 1987.

5. PEOPLE INTERESTED IN THE LEGALIZATION PROGRAM IN ARIZONA ARE TELLING ME THAT THE SERVICE IS PUTTING EVERY POSSIBLE ROADBLOCK IN ITS IMPLEMENTATION. ALLEGATIONS ARE BEING MADE THAT THE ADMINISTRATION IS TRYING TO LIMIT THE LEGALIZATION TO AS FEW PEOPLE AS POSSIBLE, EVEN THOUGH THE CLEAR CONGRESSIONAL INTENT WAS TO MAKE IT AS EXPANSIVE AS POSSIBLE UNDER THE TIME PARAMETERS IMPOSED. HOW DO YOU REACT TO THESE ALLEGATIONS AND CRITICISMS? DOES THE ADMINISTRATION INTEND TO IMPLEMENT THE LEGALIZATION PROVISIONS GENEROUSLY OR DO YOU INTEND TO PERPETUATE THE ILLEGAL ALIEN PROBLEM BY LEAVING MILLIONS OF ILLEGAL ALIENS IN THE U.S. SUBJECT TO EXPLOITATION AND HARASSMENT?

   I believe the proposed regulations which, by the way, have been widely disseminated are in keeping with the intent of Congress in the implementation of the Immigration Reform and Control Act of 1986 in a fair, efficient and proper manner as I believe was the intent of the Congress.

Questions For Mr. Disler From Senator DeConcini

1. WHAT ROLE DID THE SPECIAL COUNSEL HAVE IN THE ACT FOR PROMULGATION OF REGULATIONS UNDER THE ACT? WHEN WAS THE SPECIAL COUNSEL REGULATIONS PROMULGATED? IN VIEW OF THE ADMINISTRATION'S STRONG OPPOSITION TO THE ANTI-DISCRIMINATION AND SPECIAL COUNSEL PROVISIONS, CAN YOU UNDERSTAND HOW PEOPLE WHO SUPPORTED MIGHT QUESTION YOUR COMMITMENT TO OBJECTIVELY AND FORCIBLY IMPLEMENTING THE PROVISIONS? YOU STATE IN YOUR PREPARED TESTIMONY THAT YOU WISH TO "PUT TO REST ANY FEARS THAT WE LACK COMMITMENT IN THIS ENDEAVOR". ARE YOU WILLING TO MATCH THESE WORDS WITH ACTION? WHAT SPECIFIC STEPS DO YOU PROPOSE TO TAKE TO PROVE THIS COMMITMENT?

The Act does not specify a specific role for the Special Counsel in the promulgation of regulations under the Act. The proposed regulations for the Special Counsel were published on March 23, 1987.

Mr. Disler's March 24, 1987 testimony emphatically states the Administration's commitment "to the full and faithful implementation of the new legislation, including vigorous enforcement of its prohibitions." We have indeed matched these words with action. After an initial period of review of the Act's anti-discrimination provisions and the study of issues related to those provisions, we have promulgated a proposed rule for public comment, published on March 23, 1987. We have requested funding for a 30-person office for the remainder of fiscal year 1987 and funding to support a doubling of personnel for the office in fiscal year 1988. We have undertaken steps to secure office space, equipment, supplies, and we are in the process of hiring staff for the office itself. The Attorney General has named a chief hearing officer to oversee the administrative law judge program required under the Act. Mary E. Mann has been appointed Acting Special Counsel (Mailing address: P. O. Box 65490, Washington, D. C. 20035-5490). More recently the President nominated Lawrence J. Siskind to be Special Counsel for Immigration Related Unfair Employment Practices. It is our hope that the Senate will act swiftly in rendering its advise and consent to that nomination. We continue to work steadily to implement the anti-discrimination provisions of the Act.

2. THE REGULATIONS THAT YOU PROPOSED YESTERDAY TAKE A VERY RESTRICTIVE AND NARROW INTERPRETATION OF DISCRIMINATION TO BE COVERED BY THE SPECIAL COUNSEL PROVISION. DO YOU THINK THAT THE "INTENTIONALLY AND KNOWINGLY" DISCRIMINATED STANDARD IS SUFFICIENT TO PROTECT THE INDIVIDUALS OF RECENT FOREIGN DESCENT FROM DISCRIMINATION UNDER THE ACT? WHAT RECOURSE UNDER YOUR INTERPRETATION OF THE ACT WOULD AN INDIVIDUAL HAVE WHO HAS PASSED OVER FOR A JOB FOR A MORE AMERICANIZED BUT LESS QUALIFIED INDIVIDUAL. DOES THIS INTERPRETATION OF THE ACT REFLECT THE ADMINISTRATION'S OFTEN STATED COMMITMENT TO GUARANTEE THAT ALL EMPLOYMENT DECISIONS IN THE U.S. WILL BE BASED ON MERIT AND NOT ON COLOR, RELIGION OR NATIONAL ORIGIN?

We do believe that the referenced standard of discrimination protects individuals of foreign descent from discrimination under the Act. This standard is well-grounded in the statutory language and legislative history of the Act as highlighted in the preamble to the proposed rule. Any person who is authorized to work but is passed over for a less qualified individual may bring a charge of discrimination with the Special Counsel, or, if the charge falls within the jurisdiction of the Equal Employment Opportunity Commission, with the EEOC. With respect to a charge under the jurisdiction of the Special Counsel, if the individual can show that he or she was qualified for the job and applied for it, that he or she was rejected for the job and the job remained open, and the job was later given to another individual of similar qualifications, then the burden would shift to the employer to produce a non-discriminatory explanation for not selecting the charging party. If the employer produces such an explanation, the charging party would have the opportunity to show that such an explanation was a pretext or that he or she was otherwise passed over because of national origin or citizenship status. This reading of the Act reflects our understanding of Congressional intent as indicated in the plain language of the anti-discrimination provision of the legislative history of the Act. We will review carefully any comments responding to the proposed regulations which address this matter.

Questions From Senator Simon

A. Fees

IN YOUR PRESS STATEMENT OF MARCH 16, YOU ANNOUNCED THAT THE FILING FEES FOR FORM I-687 WOULD BE "WITHIN THE REACH OF PERSONS WHO ARE ELIGIBLE." EVEN WITH THE BAR TO LEGALIZATION TO THOSE DEEMED PUBLIC CHARGES, I AM DEEPLY CONCERNED THAT THE IMPOSITION OF FEES OF THIS AMOUNT WILL MEAN HARDSHIP ON FAMILIES AND POTENTIALLY SPLIT THEM. YOU HAVE RECOGNIZED THIS PROBLEM TO SOME DEGREE BY ESTABLISHING A FAMILY RATE OF $420. SINCE THE TOTAL COST TO A LEGALIZED INDIVIDUAL WILL ALSO INVOLVE PAYMENTS FOR A MEDICAL EXAMINATION AND IMMUNIZATION, PAYMENTS FOR FILING AN APPEAL AND EVENTUAL PERMANENT RESIDENCY, AND PAYMENT TO A QUALIFIED DESIGNATED ENTITY, THE AMOUNT HE OR SHE PAYS NECESSARILY WILL BE MUCH HIGHER THAN $185. ISN'T THERE SUFFICIENT FLEXIBILITY IN THE LAW TO PERMIT PAYMENTS ON AN INSTALLMENT BASIS? ALSO, I AM PARTICULARLY INTERESTED TO KNOW WHAT BARS THE SERVICE FROM APPLYING THE FAMILY RATE TO ALL RELATED AND DEPENDENT MEMBERS IN A HOUSEHOLD RATHER THAN SOLELY TO MINOR DEPENDENT CHILDREN. THIS DEFINITION WOULD ADVANCE THE CONGRESSIONAL PURPOSE OF MAINTAINING FAMILY UNITY AND AVOID UNDUE HARDSHIP.

We believe we have already built flexibility into the administration of the fees for legalization. We have established a $420 cap for a family for the application fees and we have established a $50.00 fee for individual minors who are living with their families. We believe that this fee structure minimizes the financial hardship that a family would endure and believe that the fee is fair and reasonable in view of the benefits provided. With regard to installment payments, such a system would increase our administrative costs in view of the need for scheduling installments and collections. That is not our business. Insofar as broadening those who qualify under the family cap, we feel the family members set forth in our proposed regulations are appropriate. Inasmuch as each application stands on its own merits, persons other than minor dependent children should pay his or her fair share of the costs.

B. Physical presence requirement

WHETHER AN ALIEN'S UNAUTHORIZED BRIEF, CASUAL, AND INNOCENT ABSENCE FROM THE UNITED STATES SINCE THE DATE OF ENACTMENT OF THE IMMIGRATION REFORM AND CONTROL ACT, NOVEMBER 6, 1986, AND PRIOR TO THE START OF THE LEGALIZATION PROGRAM ON MAY 5, 1987, WILL CONSTITUTE AN INTERRUPTION OF THE CONTINUOUS PHYSICAL PRESENCE REQUIREMENT OF SECTION 245A.2(b) OF THE REGULATIONS, ALIENS ELIGIBLE TO APPLY FOR TEMPORARY RESIDENCE STATUS?

It is the position of the Immigration and Naturalization Service that eligible aliens who departed the United States prior to our after November 6, 1986 without prior authorization from the Service will be eligible to apply for temporary residence status if they are in the United States prior to May 1, 1987, and they otherwise meet the requirements for continuous residency. These requirements are that no departure be for longer than 45 days and that the aggregate of all departures not exceed 180 days. Additionally, the definition of the term "brief, casual, and innocent" at section 245a.1(g) of the final regulations will be effective as of May 1, 1987, which is when the final regulations will be published in the Federal Register. Departures on or after May 1, 1987 must be authorized by the Immigration and Naturalization Service.

C. Work Authorization

BECAUSE EMPLOYER SANCTIONS WILL TAKE EFFECT PRIOR TO THE END OF THE LEGALIZATION PERIOD, THERE WILL BE ALIENS WHO WILL BE GATHERING UP THEIR SUPPORTING DOCUMENTATION AND RAISING THE REQUISITE FEES WHILE THEY STILL MAY BE WORKING. THE SERVICE'S DECISION TO ALLOW WORK SELF-AUTHORIZATION ALLEVIATES THIS PROBLEM TO SOME EXTENT. DOES THE SERVICE HAVE THE FLEXIBILITY TO EXTEND THE SELF-AUTHORIZATION PERIOD THROUGH THE LEGALIZATION PERIOD IN ORDER TO FULLY PROTECT THOSE INDIVIDUALS AND THEIR FAMILIES WHO ARE APPLYING UNDER THE LAW AND AFFORD THEIR EMPLOYERS ADEQUATE PROTECTIONS FROM SANCTIONS?

The Service has this flexibility to extend this self-authorization period, but believes that by September 1, 1987, all eligible impacted aliens should have already availed themselves of the legalization opportunity.

D. Employer Affidavits

WHETHER THE EMPLOYER AFFIDAVIT FORM-LETTER REQUIREMENTS OF SECTION 245a.2(d)(2)(i) OF THE REGULATIONS MAY BE MODIFIED TO REMOVE THE WARNING OF PENALTY OF PERJURY AND WILLINGNESS TO TESTIFY, WITHOUT SACRIFICING THE INTEGRITY OF THE VERIFICATION?

The attestation under penalty of perjury included in the employer affidavit form-letter is necessary to deter possible fraud and to assure the authenticity of documents supporting the aliens eligibility for adjustment of status. Section 245A.(g)(2)(D) of the Act requires that the alien's continuous residence and physical presence in the United States be established through employment-related documents, if such documents are available. The legislative history of the statute indicates the conferees preference for use of employment related documents as the "best evidence" of continuous residence and physical presence. Credible documentary evidence is critical, since the alien's eligibility is predicated upon the establishment of specific facts that may require independent corroboration. Congressional concern with the potential for fraud and false statements is evidenced by section 245A(c)(6) of the Act. This section provides penalties to whomever files, creates or supplies a false writing or document in conjunction with applications for adjustment of status. Section 245a.2(t)(4) of the regulations requires the Service to refer any violations of section 245A(c)(6) to the United States Attorney for possible prosecution. The attestation signed under penalty of perjury can bolster the U.S. Attorney's case and is consistent with the Congressional concern over fraud in the application process. For example, consider the alien who contacts his employer friend requesting verification of his non-existent employment history. Absent the attestation, the employer friend would be more willing to supply a form letter to assist his "friend" and the U.S. Attorney would be more likely to decline prosecution based on the insufficiency of the evidence. A properly executed attestation, on the other hand, will assist the service in identifying violators of the anti-fraud provisions and give employers recognition of the legal ramifications of supplying a false writing or document. The attestation is necessary to deter fraud and to provide the employer with effective notice of the civil and criminal implications of providing fraudulent documents. Since employment related documents are the preferred evidence of continuous residence and because of the limited availability of independent corroboration, the affidavit form letter is the most susceptible to fraud. The regulations at section 245a.2(d)(2)(i) provides for other forms of employment related documentation capable of independent corroboration. The affidavit form letter is only required where official company records are unavailable to verify the alien's employment. Fraudulent attempts to gain lawful resident status through this law are anticipated. The intent underlying this provision is to minimize the submission of fraudulent documentation and the attestation, with warning, is necessary to maintain the integrity of the verification procedure.

E. Employee Referral Agencies

I HAVE RECEIVED A NUMBER OF INQUIRIES RECENTLY ABOUT THE APPLICATION OF THE EMPLOYER SANCTIONS PROVISIONS TO EMPLOYEE REFERRAL AGENCIES. THE LAW MAKES CLEAR THAT THOSE WHO REFER FOR A FEE ARE SUBJECT TO THESE PROVISIONS. HOWEVER, IN THE CASE OF AT LEAST SOME OF THESE AGENCIES THERE IS NO PHYSICAL CONTACT BETWEEN THE REFEREE AND THE REFERRER. IN ADDITION, THESE AGENCIES COME INTO CONTACT WITH MANY MORE INDIVIDUALS THAN DOES THE EMPLOYER COMMUNITY. IN LIGHT OF THE REQUIREMENT THAT ALL NEW HIRES MUST HAVE THEIR WORK ELIGIBILITY CHECKED BY THE EMPLOYER ANYWAY, CAN'T THIS SEEMINGLY DUPLICATIVE REQUIREMENT BE RELAXED FOR THE REFERRERS WITHOUT ANY SACRIFICE TO LAW ENFORCEMENT?

The law extends the responsibility of employment eligibility verification to recruiters and referrers as well as employers to assure that fraud is not perpetrated. There is concern among recruiters and referrers that the law will have an impact on the way they customarily do business, and we are actively seeking a mechanism which will insure integrity without imposing an unfair burden. Because they admittedly are integral to 10% of all job actions in the United States, they are a crucial part of the law's success.

Although recruiters verify numerous qualifications of the individuals that they refer--diplomas, business licenses, accreditations, standing with county medical boards and licensing authorities, standing in professional communities--they note that they are reluctant to ask the individual whom they are referring about identity or employment eligibility.

We believe an accommodation can be reached with the recruiting industry by adopting some mechanism allowing others, such as notaries or employers or fellow recruiters to serve as agents for them in reviewing original documentation and executing the I-9 form for them.

F. Asylees

THE U.S. SUPREME COURT IN INS V. CARDOZA-FONSECA RECENTLY UPHELD THE "WELL-FOUNDED FEAR" STANDARD FOR DETERMINING ELIGIBILITY FOR ASYLUM RATHER THAN THE "CLEAR PROBABILITY" STANDARD. PRESS REPORTS FOLLOWING THE DECISION QUOTED OFFICIALS AT THE INS THAT FEW INDIVIDUALS WHO HAD BEEN DENIED ASYLUM UNDER THE OLD STANDARD WOULD WIN IT UNDER THE NEW ONE.

The Service has taken several steps in insure that the "well-founded fear" standard enunciated by the Supreme Court in INS v Cardoza-Fonseca is properly implemented. The Court's decision along with a cover memo was sent out to our regional and district offices. The cover memo instructed our field officers to apply the Court's holding that the standard is less than clear probability and that his application should result in some increase in the overall approval rates in asylum cases. INS has also scheduled a four day training conference in mid-June for asylum adjudicators. In addition, INS will be sending a cable to our field offices with instructions regarding motions to reopen asylum cases.

G. Mariel Cuban Detention

SOME 5000 PEOPLE WHO ARRIVED BY BOAT FROM MARIEL, CUBA IN 1979 WERE DEEMED EXCLUDABLE BY INS BUT COULD NOT RETURN TO CUBA. ALMOST 2000 ARE CURRENTLY CONFINED IN ATLANTA PRISON UNDER TRULY DEPLORABLE CONDITIONS WHICH HAVE BEEN SUBJECT TO LITIGATION FOR SOME TIME. DURING A RECENT FIVE YEAR PERIOD THERE WERE SEVEN SUCCESSFUL SUICIDES, 158 SERIOUS ATTEMPTS, 2000 SERIOUS INCIDENTS OF SELF-MUTILATION AND 4000 OTHER INCIDENTS OF SELF-MUTILATION. HOW IS THE SERVICE ADDRESSING THIS FUNDAMENTAL PROBLEM? WITH REGARD TO THE HALFWAY HOUSE RELEASE PROGRAM CONDUCTED THROUGH THE OAKDALE FACILITY, WHAT ARE THE CRITERIA FOR THAT RELEASE PROGRAM? WHAT OTHER ALTERNATIVES ARE UNDER CONSIDERATION FOR THOSE WHO HAVE FINISHED SERVING THEIR STATE PRISON TERMS BUT CANNOT BE RETURNED TO CUBA?

The care and treatment of aliens detained at the U.S. Penitentiary, Atlanta, falls under the jurisdiction of the Bureau of Prisons. The utilization of the Oakdale, Louisiana facility for the halfway house program is designed to alleviate the crowded conditions at Atlanta, as well as to remove those who are less dangerous from that facility.

The halfway house program at Oakdale is a Community Relations Service Federally-funded program. Each CRS Special Placement Program (SPP) has established client selection criteria. These criteria relate to individual program design; expertise and experience of staff, inherent local political realities, services available within the community and post agency experience as it relates to the delivery of services to Mariel Cuban ex-offenders or populations.

The following includes the criteria that are addressed in the case selection interviews.

Criminality; Drug/Alcohol Abuse or Dependency; Educational Level; Mental Impairments; Participation in Prison Industries, Vocational, Educational and ESL Programs; Existence of Savings Accounts; and Family.

The Immigration and Naturalization Service is currently structuring a comprehensive review plan which will make a determination as to a subject's suitability for placement into an appropriate Community Relations Service or Public Health Service contract halfway house project. In these projects, the Mariel Cubans are provided appropriate vocational and educational training to help them assimilate into society. In order to facilitate the review process at the Oakdale Federal Alien Detention Facility, Cubans presently housed in state and local institutions will be moved to the United States Penitentiary at Atlanta, Georgia for initial screening.

Question from Senator Dole

1. LAST YEAR THE SENATE IMMIGRATION SUBCOMMITTEE APPROVED MY PROPOSED AMENDMENT TO CLARIFY INS ARREST POWERS. AT THAT TIME YOU SUPPORTED THE PROPOSAL. DO YOU STILL SUPPORT IT? ARE THERE ANY CHANGES OR IMPROVEMENTS NEEDED IN LAST YEAR'S DRAFT? WILL IT RECEIVE THE SUPPORT OF THE JUSTICE DEPARTMENT ADMINISTRATION?

The INS is certainly appreciative of your efforts in the 99th Congress to clarify the statutory arrest authority of INS officers. This piece of legislation became more important than ever with the seeping changes in the immigration laws mandated by passage of the Immigration Reform and Control Act of 1986 and the Anti-Drug Abuse Act of 1986. My staff in the Investigations Division is working closely with Mr. Pete Velde of your staff on this issue, and also with a representative of Assistant Attorney General John R. Bolton's office. It is our understanding that the Department of Justice fully supports this desired legislation, but is simply awaiting routine clearance from the Office of Management and Budget. We note that general arrest authority for INS was included as section 302 of the Administration's proposed DOJ Appropriation/Authorization Act for FY 1988. This was eliminated, however, from the bill reported out of committee (S.938). This Service anxiously awaits introduction of your bill in the 100th Congress.

2. CANADA FOR SEVERAL YEARS HAS HAD A PROGRAM TO ENCOURAGE IMMIGRATION BY ENTREPRENEURS AND INVESTORS. I AM INTERESTED IN SPONSORING A SIMILAR PROPOSAL THAT WOULD AUTHORIZE CONDITIONAL ENTRY FOR UP TO THREE YEARS OF KEY EXECUTIVES AND THEIR DEPENDENTS WHO WISH TO ESTABLISH, EXPAND OR INVEST IN BUSINESSES THAT WOULD HIRE U.S. WORKERS AND HELP REDUCE THE U.S. BALANCE OF TRADE DEFICIT. FEASIBILITY STUDIES FOR THESE BUSINESSES WOULD HAVE TO BE APPROVED BY EITHER THE DEPARTMENT OF COMMERCE OR THE SMALL BUSINESS ADMINISTRATION, ACCORDING TO THE SIZE OF THE BUSINESS. THE PROGRAM WOULD BE IN ADDITION TO THE CURRENTLY ESTABLISHED IMMIGRATION PROGRAMS. IT WOULD BE ANALOGOUS TO THE SPECIAL AGRICULTURAL WORKER PROGRAM ESTABLISHED BY CONGRESS LAST YEAR. WHAT DO YOU THINK OF THIS IDEA? WOULD YOU WORK WITH ME AND MY STAFF TO PERFECT IT?

A conditional admission, perhaps in the form of a parole, of key executives seeking to develop or expand their businesses in the United States might well be a useful amendment to the immigration law. Such a provision might reduce some present abuses of other visa categories and provide for the immigration of persons whose skills significantly benefit the economy.

Such legislation would have to be carefully drafted and closely regulated to prevent abuses. INS previously drafted a somewhat similar provision to be included in efficiency legislation. The Service would be pleased to work with your staff to develop legislation for such a program.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Deputy Assistant Attorney General

Washington, D.C. 20530

APR 30 1987

Honorable Edward M. Kennedy, Chairman
Subcommittee on Immigration and Refugee Affairs
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter of March 25, 1987 to Commissioner Alan C. Nelson with follow-up questions from the March 24, 1987 hearing.

Although it is difficult to understand the need for two separate letters to follow-up, in addition to having our witnesses return for a second appearance before the committee on April 10, 1987, we have nevertheless made every effort to accommodate the various requests. Accordingly, I have attached herewith the responses to your March 25, 1987 letter.

We are in the process of preparing responses to the April 6, 1987 letter from Chairman Biden which forwarded the collected questions from members of the committee, including yourself. We anticipate our response to those questions will be sent to the committee in the near future.

Sincerely,

John R. Bolton
Assistant Attorney General

Enclosure

Q. Implementation of the legalization program.

As you know, in enacting the legalization provisions of the Immigration Reform and Control Act, Congress made an extraordinary offer of amnesty for undocumented aliens residing here continuously since January 1, 1982. We are concerned that every effort should be made to implement this program in a generous and flexible manner and not place unnecessary barriers so that many of those eligible will be discouraged or prevented from coming forward.

Specifically, what have you done to address these issues:

-- Instructions to the field: It is clear that in some quarters of INS there is a strong institutional resistance to the whole concept of an amnesty program, and there is a fear by many that INS officers who are inclined towards "enforcement" will lead them to say "no" rather than "yes" to legalization applicants. What instructions have you sent to the field -- what guidance have you offered -- to help assure that INS officers will implement the legalization program in a flexible and generous fashion?

A. We agree that every effort should be made, and we believe is being made to implement IRCA in a generous and flexible manner. Since enactment of the legislation, the Service has involved numerous employees from field locations in planning conferences and informational meetings. Information has been disseminated in the form of telegrams and memorandums to all field locations explaining the Act and proposed implementation strategies. Draft copies of the Service's Procedures Manual for the Legalization and Special Agricultural Worker Programs have been reviewed by field personnel on three separate occasions. Copies of the Service's proposed regulations have also been distributed to field personnel.

We take strong exception with the allegation that institutional resistance will cause INS officers to deny legalization to those qualified under the law. It is our policy to adjust all persons who qualify for legalization. Not only is this our policy, but it is our duty as immigration officers and as public servants to follow Congressional intent. It is of interest to note that many INS employees who will be actually working in legalization sites have never worked in an enforcement capacity. For example, 2 of the 3 legalization sites in the State of New Jersey will be headed by INS employees with extensive backgrounds in the Service's Examinations programs (e.g., adjustment of status and naturalization).

The intention of the Service to administer the legalization provisions without prejudice is evidenced by the close coordination between the Service and voluntary agencies and other potential Qualified Designated Entities (QDE's). At a weeklong "train the trainers" conference in late March, the representatives of voluntary agencies who will be training QDE staffs and Service Officers who will be training INS legalization staffs received the same instructions which stressed my commitment to the fair and impartial administration of the legalization program as a cooperative effort.

The balance the Immigration Service will strike is hallmarked by a fair and equitable implementation on one hand and the practical need to maintain the integrity of this program by having flexibility to "weed out" through screening those with serious criminal records, those who do not meet the public charge standard, health requirements, or other grounds of exclusion not specifically removed by Congress in the statute. We will follow Congressional intent and faithfully work to attain this critical balance in implementing the law.

Q. -- Documentation: Although adequate steps must be taken to deter the use of fraudulent documents, we believe INS must nonetheless be flexible in what is required of an illegal alien to prove continuous residence --not just original documents should be required, but accurate or "xeroxed" copies, affidavits attesting to the document's authenticity, etc. Also, the INS regulations give priority to employer based data; should not labor union officials also be authorized to provide affidavits confirming employment history and continuous residence? Since many labor unions keep good employment records, should not an affidavit from a union official be given equal weight as an employer's affidavit?

A. Any and all evidence of eligibility submitted by an applicant will be considered. As provided in the proposed rule, other than records maintained by third parties of which copies may routinely be submitted, INS wants original documents "wherever possible." This provision is designed to deter fraud and to implement extensive forensic examination of documents. Greater weight will be given original documents; however, if they are not available, copies can be submitted. Affidavits and similar third party testimonial evidence may also be submitted. However, such testimony is subject to INS verification and optimally should be substantiated by documentary evidence. No undue priority is given employer records. In those parts of 8 CFR 210 in the proposed rule which refer to documentation and evidence of employment, primary evidence is described as:

> ...government employment records or records maintained by agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment.

Labor unions clearly fall within this category. Similarly, in 8 CFR 245A, although one section is devoted to "past employment records," this term is not meant to be exclusive of union records and the acceptability of "attestations by.. ..unions" is specifically noted.

Q. -- Cooperation of employers: We know from other countries that an employer's cooperation can be extremely important in helping establish an undocumented alien's continuous residence and eligibility to be legalized. However, if employers believe this cooperation will make them liable for not paying taxes or Social Security payments, they will be reluctant to assist. Has INS and the Justice Department raised these concerns with the Internal Revenue Service, and are you prepared to send a clear message that employers will not be harassed or targeted for helping undocumented aliens document their work and physical presence in the United States?

A. INS interprets the IRCA confidentiality provisions to extend to documents and information provided by employers and other parties to applicants to support their applications. If such documents reveal non-compliance with IRS withholding or reporting requirements or similar violations, that information will not be transmitted to the agencies concerned by INS. INS has stated this to the media, to concerned organizations such as the American Farm Bureau Federation, and to other federal agencies, including IRS, FBI, SSS, SSA, etc.

However, INS is also concerned that affected parties not misconstrue its message as the announcement of a tax amnesty or something similar. It is important that violators understand that INS will not use nor provide to any other agency for use against them any information they provide, but that they, nevertheless, remain liable for the penalties for such violations. In stressing confidentiality, INS consistently advises violators to bring themselves into compliance wherever possible.

Q. Fees: The legislative history is quite clear that legalization fees should help pay for the legalization program and be consistent with other immigration-related fees. Although we would have supported a lower fee than that you have proposed, we need not quibble over the exact dollar amount. However, many believe we should take steps to assure that the fee does not become a barrier to those who, for some reason, would find paying the entire fee at the outset a financial hardship. It would seem reasonable to allow for deferred payments in such circumstances. Shouldn't there be some flexibility in administering these fees?

A. We agree with your statement about the legislative history of the criteria for establishing the fee. We strictly believe we have determined this fee consistent with Congressional intent and fairness even though you would have liked a lower fee. We do not believe that the Government can agree to a "deferred" payment plan for aliens or can extend "credit" to legalization applicants. We are very concerned about the practical, legal and administrative difficulities we would encounter with this program. We cannot agree to a deferred payment or "credit" system.

Q. Qualified designated entities: The legalization program is a unique and massive effort in which potentially large numbers of applications must be completed within a time period statutorily limited to one year. Every effort must be made to enable voluntary agencies, labor unions and other community groups which can assist in the completion of applications and which can qualify as "qualified designated entities" to do so. This requires flexibility on the part of INS: (1) in funding levels established through cooperative agreements with qualified designated entities; (2) through the provision of adequate "up-front" monies to enable both national agencies and their affiliates to hire and train staff before the start of the legalization program; and (3) in permitting qualified designated entities to charge fees in a manner and amount which enables them to provide the required services. What will INS be doing to assure that such flexibility is present? Will INS be making every effort to ensure that agencies whose participation in the program as QDEs is needed will not be prevented from pursuing qualified designated entity status due to the restrictions mentioned above?

A. The Service has developed a balanced cooperative agreement which should enable participating qualified designated entities (QDEs) to assist legalization applicants in a risk-free environment while receiving sufficient funds from the government and reasonable nominal fees and donations from their clients to implement their programs.

For providing general information and assistance to the applicants, the national organizations and their affiliates will receive $16 each fee-receipted application accepted for adjudication by the Service; independent QDEs will receive $15 for each fee-receipted application.

The INS considers this a fair amount to pay the QDEs for the services rendered because it approximates the funding the INS would pay its contact representatives if they were performing the informational and assistance tasks.

The Service has, however, made the cooperative agreement more flexible in order that the QDEs receive additional funds to cover their costs and enhance their programs.

Following recent consultations with concerned representatives of national voluntary, labor and other organizations, the Service accepted recommendations from the volags and amended the cooperative agreement so QDEs could obtain more up-front funding and assess extra charges for counseling services.

The Service raised the start-up funding for national coordinators. Start-up funding is available only in federal fiscal year 1987 and will be based on the national coordinators' credible projections of the numbers of qualified applications to be filed with INS during the temporary residence program. Upon INS approval of the projections, national coordinators will be paid seventy-five (.75) cents for each of the total number of projected applications to be filed with INS. The service had previously set fifty (.50) cents per projected application as the start-up funding basis.

The Service clarified the matter of nominal fees/donations assessed by designated entities. The Service has determined that the seventy-five ($75.00) dollar limit imposed on counseling services and twenty-five ($25.00) dollar limit for photography and fingerprinting are reasonable and will be maintained in the cooperative agreement. However, since the INS never intended ancillary services incidental to counseling, such as photocopying, correspondence, postage, telephone calls, etc., to be covered by the $75.00 limit, these expenses ar exempted from the cap. In addition, because of the considerable documentary requirements of applicants seeking temporary residence, exempted also are extensive counseling related to documentation retrieval and waiver preparation. The designated entity may perform ancillary and extensive counseling services, provided nominal fees and/or donations are assessed for these services

The Service believes these recent changes in the cooperative agreement will encourage QDEs, particularly national organizations, to participate actively in the temporary residence program.

It is interesting to note that the current reimbursement structure allows QDEs the opportunity to charge a variety of fees. For example: The basic counseling fee ($75), plus the photography and fingerprinting fee ($25), and ancillary administrative costs ($15), for a total of $115. Consider that if 2 million applicants pay this $115.00 fee that a net amount of $230 million could be charged. This is a large amount of reimbursement for "voluntary " agencies I believe that the needs of the qualified designated entities are more than adequately met by this fee structure.

Q. **Addressing the "fear factor".**

Both employers and potentially "legalizable" persons fear the prospect of new enforcement against them under the new immigration law. Fear and ignorance of the new law have reportedly caused some employers to unncecessarily fire undocumented workers already on their payrolls. Fear of deportation may also inhibit participation in the legalization program. What assurances can you offer employers and legalization applicants regarding enforcement under the new immigration law?

Aren't there a few simple steps employers can take to protect them selves from INS enforcement and employer sanctions?

Do persons filing truthful applications have any reason at all to fear deportation as a result of applying for legalization?

What specifically are you doing to undertake public education about these protections and to correct the confusion among employers and the undocumented community?

A. Such concerns and fears are unfounded. With reference to employers, we will devote our resources and efforts to achieving voluntary compliance with the law. There is almost no evidence to support these allegations of firing.

We are fully cognizant of our responsibilities to educate employers about the law and believe that our educational program will dissipate fears and concerns. Our objectives are of an educational rather that a punitive nature. We envision a balanced approach between education and cooperation, and strict enforcement of penalties for egregious violations. For example, during the first citation period which extends from June 1, 1987, through May 31, 1988, we will not even issue a warning upon discovery of initial violation if the violation is determined to be the result of a misunderstanding of the law.

The INS has developed an employer brochure. I have attached a copy of this for your review. We have also circulated copies of the I-9 form for review and comment, as we have with the draft regulations and the other forms. These forms and materials have been reviewed by many persons and organizations, who submitted comments and suggestions. We have carefully considered these, and will continue to do so during the formal comment period.

A proposed special rule provides that those aliens who claim eligibility to temporary resident status and who intend to apply, or have applied for such status need not present documentation of employment authorization until after September 1, 1987.

Q. Aren't there a few simple steps employers can take to protect themselves from INS enforcement and employer sanctions?

A. Yes. An employer who can show that he has in good faith followed the verification requirements has an affirmative defense to any charge that illegal aliens were knowingly hired.

Q. Do persons filing truthful applications have any reason at all to fear deportation as a result of applying for legalization?

A. Persons who apply for legalization and who file "truthful applications" should not have any fear of being deported if their application for legalization is denied. However, INS intends to prosecute and deport persons who submit fraudulent documentation to INS or make material misrepresentation in the application process. INS wants to encourage all eligible persons to come forward and at the same time deter applicants from committing fraud.

Q. What specifically are you doing to undertake public education about these protections and to correct the confusion among employers and the undocumented community?

A. The Service has actively worked to provide public information on this new law. To date INS officials have participated in over 1,000 public meetings, press conferences and seminars to inform a wide range of employer, labor and community groups of the provisions of the new bill.

We have undertaken an open regulatory process that is unprecedented in it's openess to public comments. In this regard, we provided draft preliminary regulations for public comment early in the process. We currently will receive public comment until April 20th on the regulatory provisions of this bill.

The I-9, Employer Verification Form, and the other forms have been published in the Federal Register and otherwise been made available for public comment. Again, it has been a very open process, whereby we benefit from the public comments we have solicited in this approach.

The Service is implementing an intensive public education program. This program is administered at our Central Office by the new division of Employer and Labor Relations. Education and cooperation with employers and other interested parties constitute the objectives of this program. Personnel responsible for the program will prepare educational materials concerning the requirements of the law for dissemination to the public. Assistance will be provided to employers with respect to verification procedures and record retention.

Q. Ensuring clarity in message to employers.

We have read your new pamphlet entitled "Information for Employers About the New Immigration Law." While it is valuable in many respects, it contains two items which appear unnecessary if not gratuitous. For example, in one section it recommends that employers first ask new hires whether they "are U. S. citizens" and, second, otherwise lawfully authorized to work. The immigration bill contains no such citizenship test, only that the person be asked whether he is legally permitted to work in the U.S. Furthermore, the pamphlet suggests that employers may choose to check the status of all persons hired before the bill's enactment on November 6, 1986 of last year -- confusing advice to employers given the "grandfather" clause of the legislation. Why insert into your publications suggestions which in and of themselves may become the source of employment discrimination or unnecessary firings?

A. Whether or not a person is a United States citizen is of great import in the verification of employment authorization. An employer is required to verify through an examination of documents both employment eligibility and identity. The employee must attest that he/she is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien with employment authorization. A citizenship test was not envisioned by the framers of the statute; however, the fact of citizenship is integral to the verification process. This is clear in the reports of both the Senate and House of Representatives, as well as the joint conference report, which constitute the legislative history of the Act.

Furthermore, the law specifically provides that employers can "prefer to hire" a United States citizen over an alien authorized to be employed "if the two individuals are equally qualified (section 274B(a)(4)." The exception to the nondiscrimination provisions of the law does not permit a blanket "citizens only" hiring policy. However, it does allow an employer to hire a United States citizen rather than an alien if the two are equally qualified for the job. It also permits the employer to consider alien age in hiring decisions, as long as the citizen is equally qualified.

Additionally, the nondiscrimination protections of the law do not apply to an alien who claims discrimination on the basis of foreign citizenship and who has not completed a declaration of intention to become a United States citizen.

Q. Work authorization for potentially legalizable aliens.

One unforeseen problem in the new law is that enforcement of employer sanctions begins before most potential legalization applicants will receive work authorization. INS is to be commended for its creative resolution of this problem in the draft regulations in which a statement by a job applicant that he/she is pursuing legalization will suffice as employment document (in conjunction with Form I-9) until September 1, 1987. Could this not be extended to September 1, 1988, given that people will be trying to complete legalization applications throughout that period and therefore will lack the required employment authorization to be hired?

A. This suggestion would not be desirable and will not be pursued unless absolutely necessary. This date could be extended to September 1, 1988, if INS expected that it would not be able to timely adjudicate request for employment authorization for legalization applicants', after this date, within 30 days of the filing of their applications, if not sooner.

Q. Immigration detention.

The FY 1988 INS budget request continues several years of growth in the detention budget by proposing a 24 percent increase over last year. In addition, INS is requesting $15 million for the construction of another new detention center. What is the justification for such an expenditure when the number of persons actually detained has declined dramatically and when, detention, statistically, encompasses a diminishing share of overall apprehensions? Given this fact, how can INS justify further increases in detention centers detention spending? Should not employer sanctions will be deterring illegal entry, and therefore be decreasing, rather than increasing, the need for detention space?

A. Since the enactment of the Immigration Reform and Control Act of 1986, overall Border Patrol apprehensions have decreased by 26.8 percent from November 1986 to February 1987. However, the Patrol has: increased the apprehension of criminal aliens by 35 percent; INS increased narcotic interdictions, which in the first quarter of fiscal year 1987 have exceeded the total seizures made four years ago.

The INS also anticipates:

-- the increasing numbers of illegal aliens leaving the United States under the sanctions provision of the Reform act will try to reenter with fraudulent claims to legalization or Special Agriculture Workers (SAW) status.

-- family and friends of illegal aliens now residing in the United States, seemingly protected from removal, will attempt to enter the United States.

-- the flow of Other-than-Mexican (OTM) aliens, already increasing since January 1987, from such countries as El Salvador, Nicaragua and Honduras will continue to grow. The average stay in detention for the OTM's has been determined to be 19.02 days in 1986 compared to the average stay for Mexicans at 3.26 days.

-- the reduction of criminal alien felons as the MacKay Amendment mandates the expeditious location and removal of criminal aliens.

With the increase of Border Patrol resources for enforcement efforts on the immediate border, the new facility will be used to support interior enforcement initiatives, particularly INS, increased efforts to remove criminal aliens from this country.

Q. **INS enforcement**

In recent years, INS has increasingly become involved in efforts to combat drug smuggling, ethnic crime rings, terrorism, and other matters not within the traditional INS mandate. While these are important enforcement activities, we are concerned that the Service is assuming enforcement functions which the Congress has assigned to the Drug Enforcement Agency, the Federal Bureau of Investigation, and other federal enforcement agencies. While cooperation with these other agencies is appropriate, we are concerned that INS should not be diverted from its central mission.

A. We agree that investigation of aliens committing serious crimes has not fallen within the traditional INS investigative activities. However, INS uniquely has both the expertise and investigative jurisdiction to success in such investigations whether other law enforcement agencies often fall short. For example, in addition to drug smuggling or other crimes, our experience is that these same aliens also engage in crimes over which INS has exclusive investigative jurisdiction such as alien smuggling, counterfeit immigration documents, illegal entry and others. In these areas, INS ultimately has the ability to pursue the deportation of the aliens involved. Removal from the United States is oftentimes more effective in stemming the criminal activities of these aliens than is lenient sentencing or incarceration of the same participants. INS is committed to continued investigative emphasis in these areas where aliens are involved in serious narcotics offenses.

INS has been very active in efforts to control the entry of illegal drugs at the border. The narcotic interdiction efforts have included Operation Alliance, a multi-agency coordinated approach, in which INS has played major role resulting in dramatically increased narcotic seizures at the border.

It must be recognized that illegal alien smuggling activities and narcotics interdiction are inextricably intertwined. The criminal element that engaged in the smuggling of human beings for profit, also uses "mules", a term for causing illegal aliens to participate in the smuggling of illegal drugs into the country.

We cannot tolerate, either from the perspective of basic humanitarian concern for aliens, or from the perspective of the terrible social costs of these illegal drugs on American society, to allow this criminal activity to go on unchecked. INS has a strong and important role as the primary law enforcement agency between land ports of entry to stem this flow of illegal drugs, as well as fulfilling our primary mission of apprehending persons illegally crossing the border.

Q. **Palestinian arrests in California**

As you may know, there has been considerable controversy surrounding the arrest by INS officers of seven Palestinians and a Kenyan in California under Sec. 241(a)(6). Upon request of may staff, I received on March 3 a letter from Assistant Attorney General John Bolton that states that the arrests were the result of a two-year FBI-INS investigation. Mr.

Bolton argues, "Considering the length and seriousness of the investigation and what knowledge the Department has at this time, the charges against the seven Palestinians warrant their custody."

If the evidence against the Palestinians is as serious as Mr. Bolton suggests, why did INS, rather than the FBI, conduct the arrests? And why were arrests made on the broad basis of Sec. 241(a)(6)(D)? Is there an ongoing investigation in this matter?

A. The INS, having investigative jurisdiction for Immigration related offenses, engaged in a joint investigation with the FBI because the individuals involved in this case are aliens in the United States, suspected of committing unlawful acts for which they could be deportable. It is not unusual for several agencies having overlapping jurisdiction to work collectively using a variety of statutes, to bring cases to successful conclusion. In this case specifically, all aliens have, at this time been charged with violations of the Immigration and Nationality Act. Their immigration hearings are pending.

In his editorial column of February 10, 1987, in the New York Times, Mr. Anthony Lewis discusses the case of Evelyn Bitar, who was allegedly taken into federal custody simply because of her "Palestinian origins" and allegedly subjected to serious mistreatment. To determine the facts, the INS Office of Professional Responsibility (OPR), the independent office that examines serious allegations of official misconduct, is investigating and will report its findings. In your deliberations to determine whether to place credence in Mr. Lewis' account, consider the following: 1) to date all efforts by OPR to contact Evelyn Bitar have been totally rejected by her and her attorney, Dan Stormer; 2) there were no INS or FBI agents working on the case in question the evening this woman's alleged abduction occurred; 3) neither the INS nor the FBI employs a person of the description who supposedly participated in the abduction in the Los Angeles or San Diego area; 4) the alleged methods of interrogation, handcuffing a person to a metal post, interrogation in private residence, attempting to bribe, etc., are so far outside the bounds of permissible investigative behavior as to be incredible.

These facts raise an important question: whether this incident actually took place, or whether it was merely an attempt to gain publicity to influence a pending court case? The investigation into the allegations will, of course, continue. If there is any truth to them, you can be assured that appropriate corrective action will be taken.

Q. Asylum standards

The Supreme Court has properly rejected the Attorney General's usage of the "clear probability" standard in determining eligibility for asylum under the Refugee Act of 1980 (INS v. Cardoza-Fonseca). What are INS plans -- and those of the Department of Justice -- for reinstructing district directors, immigration judges, INS trial attorneys and other relevant persons within the adjudication process regarding the need now to apply a "well-formed fear" rather than a "clear probability" standard? What actions have been taken in response to the Supreme Court's decision?

A. Attached is the instruction to Service district directors relative to applying a standard of evidence in the adjudication of asylum requests consistent with the holding of the Supreme Court in INS v. Cardoza-Fonseca (No. 85-782, March 9, 1987).

As you know, the Supreme Court did not specify a standard of evidence, rather noting that it was distinct from and lesser than the "clear probability" standard which the government had been following. The Court indicated that the proper standard should be developed in the process of case-by-case adjudication. We are meeting with the Executive Offices of Immigration Review, the Office of Immigration Litigation and others within the Department of Justice to develop the appropriate field guidance.

The practical effect of the Supreme Court decision should be the approval of a somewhat higher proportion of asylum claims. In FY 1986, 30 percent of asylum requests were granted. It should be noted, however, that the Board of Immigration Appeals and our district directors have already been applying a distinct and lesser standard in cases arising within the jurisdiction of the Second, Fifth, Sixth, Seventh and Ninth Circuit Courts of Appeals based on prior rulings of those circuits. Further, a recent General Accounting Office study of asylum claims found that 24 percent of all asylum applications did not fall under any of the five categories within the refugee definition and instead spoke to the fear of harm or disruption of living based upon conditions of internal civil or military strife. The change in the standard of proof would not affect any of these claims.

Finally, a training program for designated asylum examiners of the Service is scheduled for May. At that time, we will be providing further guidance to Service officers.

Senator Simpson. On behalf of Senator Kennedy, I want to thank you all for attending, and thank you for assisting us. You must help us carefully as we do our oversight in this subcommittee. I thank Senator Simon, and we will recess until the Chairman reschedules a further hearing in a few weeks.

[Whereupon, at 4:18 p.m., the committee adjourned subject to the call of the Chair.]

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